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REGULATIONS PERTAINING TO:

EXCHANGES

As contained in Title 43 of the Code of Federal Regulations

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U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of September 28, 1973

PART 2200—EXCHANGES—GENERAL PROCEDURES

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Subpart 2200—Exchanges—Introduction

AUTHORITY: The provisions of this Subpart 2200 issued under sec. 8, 48 Stat. 1272; 43 U.S.C. 315g, as amended.

§ 2200.0–1 Purpose.

The regulations in this Group 2200 provide procedures for processing exchanges of U.S. property for other property.

§ 2200.0–2 Objectives.

The discretionary authority of the Secretary of the Interior to make exchanges will be used to consolidate land holdings of the United States, and to establish land ownership and use patterns which will permit more effective administration of the public lands of the United States, the stability of communities and enterprises dependent on the public lands, and other program objectives described in Subpart 1725 of this chapter.

§ 2200.0–5 Definitions.

(a) As used in this part the term "person" includes any person or entity legally capable of conveying and holding real property under the laws of the States within which the property is located.

§ 2200.0–8 Provisions applicable to all exchanges.

Except where otherwise noted in the regulations of this Group 2200, the regulations in this Part 2200 are applicable to all exchanges involving the selection of lands under the jurisdiction of the Department of the Interior.

Subpart 2201—Preliminary Requirements

§ 2201.1 Classification of land.

No preliminary negotiations will be conducted, and no application will be accepted for lands administered by the Bureau of Land Management which have not been classified as proper for disposal by exchange, consistent with the provisions of Group 2400 of this chapter. This does not, however, prevent an interested agency from requesting that the authorized officer of the Bureau of Land Management schedule classification action, in accordance with the provisions of Group 2400 of this chapter, for any lands which the interested agency considers may have value for exchanges.

§ 2201.2 Preliminary negotiations.

Preliminary negotiations for exchanges must be conducted with the Federal bureau or agency which would administer the offered lands if the exchange were completed. Any person who holds an interest in property within the boundaries of the area of responsibility of such Federal bureau or agency and who desires to negotiate an exchange with the United States must file with the appropriate field officer of that bureau or agency an informal proposal, in writing, describing the property which is to be offered to the United States and the property which is desired in exchange. After consultation with the authorized officer of the bureau or agency which has jurisdiction over the property desired by the proponent, the appropriate field officer will notify the proponent in writing whether the proposal appears feasible and, if so, whether any adjustments appear necessary for its consummation.

§ 2201.3 Costs.

Whenever the law permits, the bureau or agency which will administer the offered lands if the exchange is consummated will be required to do the following:

§ 2201.3–1 Appraisals.

At the request and with the approval of the authorized officer of Bureau of Land Management, arrange, by contract or otherwise, for the services of appraisers, for the purpose of appraising both the offered and selected property.

§ 2201.3–2 Publication and securing title evidence.

Pay for costs of publication of the exchange and of securing title evidence for the offered property, except as provided otherwise in other sections of this subpart.

§ 2201.3–3 Processing.

At the request of authorized officers of Bureau of Land Management, reimburse the Bureau of Land Management and the bureau having jurisdiction over the selected lands, if other than the Bureau of Land Management, for any costs incurred by them in processing an exchange filed pursuant to the regulations in this subpart.

Subpart 2202—Applications

§ 2202.1 Form.

Any person desiring to effect an exchange hereunder must file with the Bureau of Land Management an application, in duplicate, on a form approved by the Director, Bureau of Land Management, or its equivalent, properly describing the offered and selected property. If the selected property is surveyed, it must be described by legal subdivisions of the public land surveys. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. The application must be accompanied by the notice required by § 2201.2 of this part, stating that the proposal appears feasible.

§ 2202.2 Springs and water holes.

The application must include a corroborated statement relative to springs and water holes on the selected property, in accordance with §§ 2311.1 and 2311.2 of this chapter.

§ 2202.3 Statement of value, payment.

The application must state that the value of the selected property does not exceed the value of the offered property or in a case where, by statute, equalization of values is permitted by a cash payment, the amount of cash payment that must be made to equalize values shall be stated in the application.

§ 2202.4 Qualifications of applicant.

The application must state that the applicant is the owner of the interest in the property offered in exchange and that such offered interest is not the basis of any other exchange.

§ 2202.5 Segregation upon application.

The filing of a valid formal application for exchange will segregate the selected public lands as provided in § 2091.2–3 of this chapter.

§ 2202.6 Service or filing fees.

Where the law permits, no service or filing fees shall be required in connection with an application for exchange.

Subpart 2203—Requirements for Approval

§ 2203.1 Criteria.

The criteria in Part 1720 and Group 2400 of this chapter and the provisions of appropriate law shall be used in determining whether an application for exchange should be approved.

§ 2203.2 Basis for exchange.

The fair market value of the property conveyed to the United States in any exchange shall not be less than the fair market value of the U.S. property exchanged therefor.

§ 2203.3 Evidence of title.

§ 2203.3–1 Private land owners.

Owners of private property offered in exchange must submit as evidence of title to the offered lands a policy of title insurance on the form prescribed by the Department of the Interior (Form 4–1202), or on the form approved by the Attorney General (See "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1964 ed.); or a certificate of title issued by a title insurance company authorized by law to issue same, or an abstract of title prepared and authenticated by a licensed abstractor or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

§ 2203.3–2 States.

States must submit satisfactory evidence of title to the offered property. If the offered property was ever held in private ownership, certificate of title, or an abstract of title as prescribed in subparagraph (1) of this paragraph must be submitted. If the offered property was never held in private ownership the State must submit a certificate of the proper State officer showing that the offered property had not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or other proper officer under his official seal or by an abstrator or abstract company that no instrument purporting to convey or in any way encumber title to the offered property is of record or on file.

§ 2203.4 Deed to the United States.

§ 2203.4–1 Private land owners.

Owners of private property will be required to submit a warranty deed of conveyance of the offered property to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the property is situated. Revenue stamps required by State law must be affixed to the deed and canceled. A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of curtesy, dower, community interest, or any other claim to the property conveyed, or it must be fully shown that under the laws of the State in which the conveyed property is situated, the grantor's spouse has no interest, present or prospective, in the property. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

§ 2203.4–2 States.

States will be required to submit a deed of conveyance of the offered property to the United States, properly executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, together with a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law.

§ 2203.4–3 Statement of authorization.

All deeds and relinquishments must state that they are made "for and in consideration of the exchange of certain lands, as authorized by" the appropriate act of the Congress.

§ 2203.5 Taxes and equalizing money.

Where taxes which have been assessed or levied on the offered property constitute liens against the property although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the property for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him. Cash deposit or bond for taxes and, where applicable, cash payment of the amount determined to be needed to equalize values, will be payable upon request of the authorized officer of the Bureau of Land Management.

§ 2203.6 Publication.

Upon a determination by the authorized officer of the bureau or agency having jurisdiction over the selected property and the authorized officer of the bureau or agency which will administer the offered property, if the exchange is completed, that the exchange is consistent with the law and regulations and is otherwise in the public interest, notice of the proposed exchange will be published by the Bureau of Land Management. The notice of publication will give the name and post office address of the applicant, the serial number and date of the application, a reference to the statute authorizing the exchange. and the description of the offered and selected property. It will also state that all persons asserting a claim to the selected property or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objections has been served upon the applicant. The notice will be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered property is situated, and in the same manner in a newspaper of general circulation in the county or counties in which the selected property is situated. Proof of publication of notice shall consist of a certificate by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, attached to a copy of the notice as published.

Subpart 2204—Approval of Exchange and Subsequent Action

§ 2204.1 Acceptance of conveyance.

If the title and other evidence required of the applicant are found regular and in conformity with the law and regulations, and there are no objections, the authorized officer may accept title to the property offered and conveyed to the United States. He will then issue a patent or other instrument of transfer for the property selected in exchange and, where authorized by law, will transmit to the applicant the cash payment, if any, necessary to equalize the values.

§ 2204.2 Right to reject.

§ 2204.2–1 Basis for denial.

An application may be rejected at any time prior to the issuance of patent or other instrument of transfer. Exchanges will not be consummated, in the discretion of the authorized officer when, for example, after public notice—

(a) An appropriate public requirement for the selected property is identified, or

(b) Information is received which establishes that the exchange is not in the public interest.

§ 2204.2–2 Changes in value after publication.

Changes in values, after publication of the notice required by § 2203.6 will ordinarily not be a basis for rejection of an application, all other factors being equal.

§ 2204.2–3 Contractual rights.

Prior to issuance of patent, no action taken shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

§ 2204.3 Return of title evidence.

If an applicant has submitted deed and title evidence in connection with an exchange and his application is rejected, the evidence of title will be returned to the applicant. If the deed was recorded, a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. sec. 872).

§ 2204.4 Removal of improvements.

When any buildings, fencing, or other movable improvements owned or erected by an applicant on the land relinquished or conveyed are not a part of the offer to relinquish or convey, the applicant may remove such improvements from the land upon receipt of notice that the exchange has been approved, provided that such removal is accomplished within the time period specified in said notice.

PART 2210—STATE EXCHANGES

Subpart 2211—Under the Taylor Grazing Act

Sec.
2211.0–3 Authority.
2211.0–6 Policy.
2211.0–8 Lands subject to exchange.
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2211.1–3 Publication costs.
2211.2 Status of conveyed lands.

Subpart 2212—Miscellaneous State Exchanges

2212.1 General.

Subpart 2211—Under the Taylor Grazing Act

§ 2211.0–3 Authority.

(a) *Section 8 of the Taylor Grazing Act.* Subsections (c) and (d) of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. sec. 315g), authorize exchanges of lands between the United States and a State, upon the application of the State, and provide for the issuance of patent for the selected lands upon acceptance of title to the lands conveyed to the United States in exchange therefor.

(b) *Applicable regulations.* All the provisions of § 2200.0–8 apply to State exchanges except:

(1) States may file applications for exchanges without meeting the requirements for preliminary negotiations.

(2) State exchanges are not subject to the classification requirements of Group 2400 of this chapter.

§ 2211.0–6 Policy.

The program of the Secretary of the Interior is to cooperate with the States to effect mutually advantageous exchanges and to process State proposals for exchange as rapidly as possible, consistent with the law and the regulations of this subpart.

§ 2211.0–8 Lands subject to exchange.

(a) *Generally.* Lands offered in exchange by a State may be State-owned lands within or without the boundaries of a grazing district, and the selected lands may be surveyed grazing district lands not otherwise appropriated or reserved, or unappropriated and unreserved surveyed public lands of the United States, within the same State. If, however, the selected lands are within a grazing district, the lands offered by the State must be within the same grazing district and the selected lands must lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(b) *Unsurveyed school sections.* Unsurveyed school sections within or without the boundary of a grazing district may be offered by the State in an exchange based upon equal areas, but the Secretary of the Interior will consider and determine whether the values of the offered and selected lands are approximately equal for the purpose of the exchanges. No mineral reservations to the State may be made in such unsurveyed sections, the identification of which will be determined by protraction or otherwise, the State by such selections waiving all rights to the unsurveyed sections.

(c) *State-owned lands within areas reserved or withdrawn.* State-owned lands, as well as school sections surveyed and unsurveyed, the title to which has not yet vested in the State, located within national forests, national parks and monuments, Indian or other reservations or withdrawals, may be offered as a basis for an exchange under said section 8 of the Taylor Grazing Act as amended, where the selected lands are not within a grazing district. Where the selected lands are within a grazing district, lands within the exterior boundaries of the grazing district and also within such reservations or withdrawals may be offered as a basis for an exchange only if the authorized officer, Bureau of Land Management, determines that the exchange would not interfere with the administration or value of the remaining lands in the grazing district for grazing purposes.

§ 2211.1 Terms and conditions.

§ 2211.1–1 Reservations.

Either party to an exchange may make reservations of minerals, easements, or rights of use. The right to enjoy reservations made in lands conveyed to or by the United States shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the lands as the authorized officer deems necessary.

§ 2211.1–2 Patent subject to lease.

Where a State exchange under this section involves lands embraced in outstanding grazing leases under section 15 of the Taylor Grazing Act (43 U.S.C., sec. 315m) issued prior to the filing of the State exchange application, the Secretary of the Interior, upon the request of the State, may issue patent to the State, subject to such outstanding lease, in accordance with the Act of August 24, 1937 (50 Stat. 748; 43 U.S.C. sec. 315p).

§ 2211.1–3 Publication costs.

The State shall pay one-half the cost of publication.

§ 2211.2 Status of conveyed lands.

Lands conveyed to the United States pursuant to a State exchange under this section, upon acceptance of title thereof, become public lands. If the lands are located within the exterior boundaries of a grazing district, they become a part of that district.

Subpart 2212—Miscellaneous State Exchanges

§ 2212.1 General.

Because of the infrequency of transactions involving State exchanges under the Acts of May 7, 1932 (47 Stat. 150), section 3 of the Act of June 14, 1934 (48 Stat. 962), and the Act of December 7, 1942 (56 Stat. 1042), regulations covering these transactions are not codified. Any such transaction will be handled in a manner consistent with the authorizing laws and with the regulations in § 2200.0–8.

PART 2220—PRIVATE EXCHANGES UNDER TAYLOR GRAZING ACT

§ 2220.0–3 Authority.

Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C., sec. 315g), authorize the Secretary of the Interior, when the public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. The applicant must pay one-half the cost of publication. Any such transaction will be handled in a manner consistent with the regulations in § 2200.0–8.

PART 2230—NATIONAL FOREST EXCHANGES

Sec.
2230.0–3 Authority.
2230.1 Applicable regulations.

§ 2230.0–3 Authority.

The Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C., sec. 485), and other acts authorize the United States to convey Federal lands or timber and in exchange therefor to accept title to non-Federal lands which thereupon become a part of the national forest system administered by the Secretary of Agriculture.

§ 2230.1 Applicable regulations.

All proposals for exchange for the consolidation or extension of national forests shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture in compliance with the regulations of the Secretary of Agriculture. In addition, when an application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents must comply with the regulations in § 2200.0–8.

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

Sec.
2240.0–3 Authority.
2240.1 General.

§ 2240.0–3 Authority.

(a) *Point Reyes National Seashore, Calif.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., secs. 459c–459c–7), providing for the establishment of the Point Reyes National Seashore in

the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land, waters, and other property within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(b) *Fire Island National Seashore.* The Act of September 11, 1964 (78 Stat. 928; 16 U.S.C., secs. 459e–459e–9), authorizes the Secretary of the Interior to establish an area to be known as the "Fire Island National Seashore" and to acquire by exchange lands within the boundaries of the seashore as specified in the act. When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and may convey to the grantor any federally owned land under his jurisdiction. The properties so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to a grantor in order to equalize the values of the lands exchanged.

(c) *Lake Mead National Recreational Area.* The Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C., secs. 460n–460n–9) authorizes the Secretary of the Interior to revise the boundaries of the Lake Mead National Recreation Area and to procure property within the exterior boundaries of such area in such manner as he shall consider to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the values of the properties exchanged.

(d) *Whiskeytown-Shasta-Trinity National Recreation Area, Calif.* The Act of November 8, 1965 (79 Stat. 1295) authorizes the Secretary of the Interior to administer the Whiskeytown unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The Secretary is authorized to accept title to any non-Federal property within any part of the recreation area and in exchange therefor to convey to the grantor any federally owned property under his jurisdiction within the State of California which he classifies as suitable for exchange or disposal. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the value of the properties exchanged.

(e) *Bighorn Canyon Recreation Area.* The Act of October 15, 1966 (16 U.S.C. 460t (Supplement III, 1965–67)) establishes the Bighorn Canyon National Recreation Area. It authorizes the Secretary of the Interior to accept title to any non-Federal property within the area and convey in exchange therefor any federally owned property under his jurisdiction in the States of Montana and Wyoming which he classifies as suitable for exchange or other disposal, notwithstanding any other provision of law. Property so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(f) *Act of July 15, 1968.* (1) The Act of July 15, 1968 (16 U.S.C.A. 460L–22, 1969 Supplement) authorizes the Secretary of the Interior to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, in exchange for any federally owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal. The selected land shall be located in the same State as the offered land. Timber lands subject to harvest under a sustained yield program shall not be exchanged. Public hearings will be held in the area where the lands to be exchanged are located, if a written request therefor is submitted to the Secretary or his authorized officer prior to such exchange, by a State or a political subdivision thereof or by a party in interest. The value of the properties exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by payment of cash to the grantor or to the Secretary, as circumstances require. Payment of cash by the Secretary shall be made only from funds appropriated for the acquisition of land for the area.

(2) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with 16 U.S.C. sections 1 and 2–4, and which are grouped into the following descriptive categories: (i) National parks, (ii) national monuments, (iii) national historical parks, (iv) national memorials, (v) national parkways, and (vi) national capital parks.

(3) The term "miscellaneous areas' includes lands under the administrative jurisdiction of another Federal agency, or lands in private ownership, and over which the National Park Service, under the direction of the Secretary of the Interior, pursuant to cooperative agreement, exercises supervision for recreational, historical, or other related purposes, and also any lands under the care and custody of the National Park Service other than those described above.

(g) *North Cascades National Park, Washington.* The Act of October 2, 1968 (82 Stat. 926) establishes the North Cascades National Park, the Ross Lake National Recreation Area, and the Lake Chelan National Recreation Area. The act authorizes the Secretary of the Interior to accept title to any non-Federal property within the boundaries of the park and the recreation areas and in exchange therefor to convey to the grantor of such property and federally owned property under his jurisdiction in the State of Washington which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(h) *Redwood National Park, Calif.* The Act of October 2, 1968 (82 Stat. 931) establishes the Redwood National Park. The Secretary of the Interior is authorized to accept title to any non-Federal property within the boundaries of the park, and outside of such boundaries within prescribed limits in exchange for any federally owned property under the jurisdiction of the Bureau of Land Management in California, except property needed for public use and management, which he classifies as suitable for exchange or other disposal. Such federally owned property shall also be available for use by the Secretary in payment of just compensation for real property taken pursuant to the act. The values of the properties exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(i) *Biscayne National Monument, Fla.* The Act of October 18, 1968 (Public Law 90–606) authorizes the Secretary of the Interior to establish the Biscayne National Monument, and to accept title to any non-Federal property within the boundaries of the national monument and outside such boundaries within prescribed areas, in exchange for any federally owned property under his jurisdiction in the State of Florida which he classifies as suitable for exchange or other disposal. The values of the properties exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as circumstances require.

§ 2240.1 General.

Exchanges to eliminate private holdings from national parks and national monuments for which no specific provisions are made in this section have generally reached the limits allowed by enabling legislation. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the regulations in § 2200.0–8.

PART 2250—WILDLIFE REFUGE EXCHANGES

Sec.
2250.0–3 Authority.
2250.1 Applicable Regulations.

§ 2250.0–3 Authority.

(a) Section 4(b)(3) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire lands or interests therein by exchange (1) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (2) for the right to remove, in accordance with such

terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the National Wildlife Refuge System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Section 2(b) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire by purchase, donation, or otherwise, lands or interests therein necessary for the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Section 1 of the Act of August 22, 1957 (71 Stat. 412), as amended (16 U.S.C. 696) authorizes the Secretary of the Interior to acquire, for the National Key Deer Refuge, lands in designated areas in Florida which he finds suitable for the conservation and management of key deer and other wildlife by exchange for any Federally owned property in Florida which he classifies as suitable for exchange or other disposal. The values of the property so exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as required.

§ 2250.1 Applicable regulations.

Any such transaction will be handled in a manner consistent with the authorizing law and with the regulations in § 2200.0–8.

PART 2260—O&C EXCHANGES

Sec.
2260.0–2 Objectives.
2260.0–3 Authority.
2260.0–6 Policy.
2260.1 Applicable regulations.

§ 2260.0–2 Objectives.

The primary objectives sought by the Act of July 31, 1939, include the following:

(a) Simplification of administration, improvement, and protection through the consolidation of holdings.

(b) The development of a balanced distribution of age classes of timber with a view to promoting the policy of sustained-yield forest management provided for in the Act of August 28, 1937.

(c) The establishment of sustained-yield management units, with a view to sustaining dependent industry, dependent labor and dependent communities.

(d) The effective administration of forest units.

(e) Aid in establishing economic operating units for combined agricultural and grazing enterprises, where such enterprises appear to provide the most desirable use of the land.

(f) The protection of recreational, open space, and natural beauty values against impairment or destruction.

§ 2260.0–3 Authority.

The Act of July 31, 1939 (53 Stat. 1144) authorizes and empowers the Secretary of the Interior, in his discretion, in the administration of the act approved August 28, 1937 (50 Stat. 874), to exchange any nonmineral land formerly granted to the Oregon and California Railroad Co., title to which was revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, or State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The act further provides that all lands and timber secured by the United States pursuant to any such exchange shall be administered in accordance with the same provisions of law as the revested and reconveyed lands exchanged therefor, and that parties to the exchange may make reservations of easements, rights-of-way, and other interests and rights. Both the offered and selected lands in Coos Bay Wagon Road exchanges must be in the same county.

§ 2260.0–6 Policy.

(a) *Forest management.* The Act of August 28, 1937 (50 Stat. 874), provides for the conservation of land, water, forest, and forage on a permanent basis; the prudent utilization of these resources for the purposes to which they are best adapted; and the realization of the highest current values consistent with undiminished future returns. It seeks, through the application of the policy of sustained-yield management, to provide perpetual forests which will serve as a foundation for continuing industries and permanent communities.

(b) *Exchanges.* Lands and timber to be acquired under authority of the Act of July 31, 1939, will be of a character and so located that the acquisition thereof will promote the conservation principles laid down by the Act of August 28, 1937. Lands and timber which will be disposed of by exchange will be of such a type and so located that the transfer of these resources will not interfere with those principles. Exchanges will not be authorized where the exchange would create a serious disturbance of existing economic conditions; or in cases where the exchange would operate materially to reduce the revenues which should accrue to the counties under authority of the Act of August 28, 1937. Neither can approval be given to the exchange of lands which would prevent the free and ready access of the Government in the development of the resources under its jurisdiction, nor the passing of title to which would in any way interfere with the policy of sustained-yield forest management which governs the administration of the O. and C. lands.

§ 2260.1 Applicable regulations.

These exchanges are subject to the provisions of § 2200.0–8.

PART 2270—MISCELLANEOUS EXCHANGES

Subpart 2271—Indian Reservation Exchanges

Sec.
2271.0–3 Authorities.
2271.1 Reservations established by statute.

Subpart 2272—Reclamation Exchanges

2272.1 Applicable regulations.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System

2273.0–3 Authority.

Subpart 2271—Indian Reservation Exchanges

§ 2271.0–3 Authorities.

(a) *Executive order reservations.* The Act of April 21, 1904 (33 Stat. 211; 43 U.S.C., sec. 149), authorizes the Secretary of the Interior to exchange any vacant, nonmineral, nontimbered, surveyed public lands located in the same State as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order. The offered and selected lands must be approximately equal both in value and area. The applicant must pay all costs of consummating the exchange.

(b) *San Juan, McKinley, and Valencia Counties, N. Mex.* Section 13 of the Act of March 3, 1921 (41 Stat. 1239).

(c) *Apache, Coconino, and Navajo Counties, Ariz.* Section 2 of the Act of June 14, 1934 (48 Stat. 961), as supplemented by the Act of May 9, 1938 (52 Stat. 300).

§ 2271.1 Reservations established by statute.

Exchanges and lieu selections involving lands within Indian reservations occur infrequently. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the general regulations of § 2200.0–8 for exchanges, and of Subpart 2211 for State lieu selections.

Subpart 2272—Reclamation Exchanges

§ 2272.1 Applicable regulations.

(a) Regulations for exchange under the Act of August 13, 1953 (67 Stat. 566; 43 U.S.C. 451–451K), are in Part 406 of this title and for exchanges under the Act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c), are in §§ 403.6–403.11 of this title.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

§ 2273.0–3 Authority.

(a) *National wild and scenic rivers system.* The Act of October 2, 1968 (82 Stat. 906) institutes a national wild and scenic rivers system, designates the initial components of that system and provides for additional components to be added to the system. The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands within any component of the system administered by him to an average of not more than 100 acres per mile on both sides of the river. The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the system in exchange for any federally owned property under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(b) *National trails system.* The Act of October 2, 1968 (82 Stat. 919), provides for the establishment and designation of trails by the Secretary of the Interior or the Secretary of Agriculture, each on lands administered by him.

(1) The Act authorizes the Secretary of the Interior to accept title to any non-Federal property within the trail right-of-way in exchange for any federally owned property under his jurisdiction which is located in the State and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(2) The Act authorizes the Secretary of Agriculture to use authorities and procedures available to him in connection with exchanges of national forest lands.

(3) When an application involves the selection of public domain land outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents shall comply with the regulations in § 2244.1.

This circular supersedes Circulars 1814 and 1831.

GPO 850-284

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

SUBCHAPTER I—TECHNICAL SERVICES (9000)

[Circular No. 2353]

PART 3860—MINERAL PATENT APPLICATIONS

PART 9180—CADASTRAL SURVEY

Appointment of Mineral Surveyors

Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

1. Section 3861.5–1 of Subpart 3861 of 43 CFR Part 3860 is revised to read:

§ 3861.5–1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), the Director or his delegate will appoint only a sufficient number of surveyors for the survey of mining claims to meet the demand for that class of work. Each appointee shall qualify as prescribed by the Director or his delegate. Applications for appointment as a mineral surveyor may be made at any office of the Bureau of Land Management listed in § 1821.2–1 of these regulations. A roster of appointed mineral surveyors will be available at these offices. Each appointee may execute mineral surveys in any State where mineral surveys are authorized.

2. Paragraph (b) of § 9185.1–3 of Subpart 9185 of 43 CFR Part 9180 is revised to read:

§ 9185.1–3 Mining claims.

* * * * *

(b) *Mineral surveyors.* See § 3861.5–1 for the appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39).

JACK O. HORTON,
Assistant Secretary of the Interior.

OCTOBER 24, 1973.

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Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular 2354]

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

Sec.
23.1 Purpose.
23.2 Scope.
23.3 Definitions.
23.4 Application for permission to conduct exploration operations.
23.5 Technical examination of prospective surface exploration and mining operations.
23.6 Basis for denial of a permit, lease, or contract.
23.7 Approval of exploration plan.
23.8 Aproval of mining plan.
23.9 Performance bond.
23.10 Reports: Inspection.
23.11 Notice of noncompliance: Revocation.
23.12 Appeals.
23.13 Consultation.

§ 23.1 Purpose.

It is the policy of this Department to encourage the development of the mineral resources under its jurisdiction where mining is authorized. However, the public interest requires that, with respect to the exploration for, and the surface mining of, such minerals, adequate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

§ 23.2 Scope.

(a) Except as provided in paragraphs (b) and (c) of this section, the regulations in this part provide for the protection and conservation of nonmineral resources during operations for the discovery, development, surface mining, and onsite processing of minerals under permits, leases, or contracts issued pursuant to: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359); the Materials Act of July 31, 1947, as amended (30 U.S.C. 601–604); and title 23, United States Code, section 317, relating to appropriation for highway purposes of lands owned by the United States.

(b) The regulations in this part do not cover the exploration for oil and gas or the issuance of leases, or operations thereunder, for oil and gas under the mineral leasing acts, which are covered by regulations in Subpart 3107 and Part 3120 of this title and 30 CFR Part 221; neither do they cover minerals underlying Indian tribal or allotted lands, which are subject to regulations in Title 25 CFR, nor minerals subject to the general mining laws (30 U.S.C. 21–54); nor minerals under the Materials Act which are under the jurisdiction of the Secretary of Agriculture (74 Stat. 205); nor minerals underlying lands, the surface of which is not owned by the U.S. Government.

(c) When more than one permit or contract is expected to be issued to dispose of materials in a particular deposit or tract of land, such as community pits or common use areas, no requirement for reclamation will be made in such permits or contracts and the burden of reclamation will be assumed by the Government. In such cases where reclamation is not required in the permit or contract, the permittee or contracting party shall, in addition to payment of the sales price required under his permit or contract, make a reasonable contribution, as determined by the authorized officer, to defray the cost to the Government of reclamation of the land. Such contribution will be deposited in a separate account. In computing such added contribution, the authorized officer shall establish the estimated cost of reclamation upon completion of extractive operations for the deposit and the estimated total volume of material to be extracted. The contribution shall be a proportionate share of the estimated cost of reclamation in the same ratio as the material sold under the permit or contract bears to the total estimated volume of the deposit which is expected to be extracted.

(d) The regulations in this part shall apply only to permits, leases, or contracts issued subsequent to the date on which the regulations become effective.

§ 23.3 Definitions.

As used in the regulations in this part:

(a) "Mineral leasing acts" means the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181–287) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359);

(b) "Materials Act" means the Act of July 31, 1947, as amended (30 U.S.C. 601–604);

(c) "Mining Supervisor" means the Area Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease;

(d) "District manager" means the manager of the district office or other authorized officer of the Bureau of Land Management having administrative jurisdiction of and responsibility for the land covered by a permit, lease, contract, application, or offer;

(e) "Overburden" means all the earth and other materials which lie above a natural deposit of minerals and such earth and other materials after removal from their natural state in the process of mining;

(f) "Area of land to be affected" or "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden or waste is to be or has been deposited, and includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to an operation and for haulage;

(g) "Operation" means all of the premises, facilities, roads, and equipment used in the process of determining the location, composition or quality of a mineral deposit, or in developing, extracting, or onsite processing of a mineral deposit in a designated area;

(h) "Method of operation" means the method or manner by which a cut or open pit is made, the overburden is placed or handled, water is controlled or affected and other acts performed by the operator in the process of exploring or uncovering and removing or onsite processing of a mineral deposit;

(i) "Holder" or "operator" means the permittee, leasee, or contractor designated in a permit, lease, or contract;

(j) "Reclamation" means measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

§ 23.4 Application for permission to conduct exploration operations.

No person shall, in any manner or by any means which will cause the surface of lands to be disturbed, explore, test, or prospect for minerals (other than oil and gas) subject to disposition under the mineral leasing acts or the Materials Act without first filing an application for, and obtaining, a permit, lease or contract which authorizes such exploring, testing, or prospecting.

Reprint of regulations current as of November 20, 1973.

Circular Distribution List

§ 23.5 Technical examination of prospective surface exploration and mining operations.

(a) (1) In connection with an application for a permit or lease under the mineral leasing acts or an application for a permit or an offer to make a contract under the Materials Act, the district manager shall make, or cause to be made, a technical examination of the prospective effects of the proposed exploration or surface mining operations upon the environment. The technical examination shall take into consideration the need for the preservation and protection of other resources, including recreational, scenic, historic, and ecological values; the control of erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution; the reclamation by revegetation, replacement of soil, or by other means, of lands affected by the exploration or mining operations; the prevention of slides; the protection of fish and wildlife and their habitat; and the prevention of hazards to public health and safety.

(2) A technical examination of an area should be made with the recognition that actual potential mining sites and mining operations vary widely with respect to topography, climate, surrounding land uses, proximity to densely used areas, and other environmental influences and that mining and reclamation requirements should provide sufficient flexibility to permit adjustment to local conditions.

(b) Based upon the technical examination, the district manager shall formulate the general requirements which the applicant must meet for the protection of nonmineral resources during the conduct of exploration or mining operations and for the reclamation of lands or waters affected by exploration or mining operations. The general requirements shall be made known in writing to the applicant before the issuance of a permit or lease or the making of a contract, and upon acceptance thereof by the applicant, shall be incorporated in the permit, lease, or contract. If an application or offer is made under the Mineral Leasing Act for Acquired Lands and if the lands are under the jurisdiction of an agency other than the Department of the Interior, the requirements must incorporate provisions prescribed by that agency. If the application or offer is made under the Mineral Leasing Act of February 25, 1920, or the Materials Act, and if the lands are under the jurisdiction of an agency other than the Department of the Interior, the district manager shall consult representatives of the agency administering the land and obtain their recommendations for provisions to be incorporated in the general requirements. If the district manager does not concur in the recommendations, the issues shall be referred for resolution to the Under Secretary of the Department of the Interior and the comparable officer of the agency submitting the recommendations. In the case of disagreement on the issues which are so referred, the Secretary of the Interior shall make a determination on the recommendations which shall be final and binding.

(c) In each instance in which an application or offer is made under the mineral leasing acts, the mining supervisor shall participate in the technical examination and in the formulation of the general requirements. If the lands covered by an application or offer are under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management, the district manager shall consult representatives of the bureau administering the land. If the lands covered by the application or offer are under the jurisdiction of an agency other than the Department of the Interior and that agency makes a technical examination of the type provided for in paragraph (a) of this section, district managers and mining supervisors are authorized to participate in that examination.

(d) Whenever it is determined that any part of the area described in an application or offer for a permit, lease, or contract is such that previous experience under similar conditions has shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appropriate State water pollution control agency, or by the Secretary of the Interior; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—unless and until it has been affirmatively demonstrated to the State water pollution control agency and to the Department of the Interior that such lowering of quality is necessary to economic and social development and will not preclude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features; the district manager may prohibit or otherwise restrict operations on such part of an area.

(e) If, on the basis of a technical examination, the district manager determines that there is a likelihood that there will be a lowering of water quality as described in paragraphs (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued or contract made until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. sec. 466 et seq.) or of Executive Order No. 11288 (31 F.R. 9261). Where a permit or lease is involved the district manager's determination shall be made in consultation with the mining supervisor.

(f) Each notice of a proposed appropriation of a materials site filed by the Department of Transportation under 23 U.S.C. 317 shall be transmitted to the proper district manager. The district manager shall cause a technical examination to be made as provided in paragraph (a) of this section and shall formulate the requirements which the State highway department or its nominee must meet. If the land covered by the proposed appropriation is under the jurisdiction of a bureau of the Department other than the Bureau of Land Management, the district manager shall consult representatives of the bureau administering the land. If the district manager determines, or, in an instance in which the land is administered by another bureau, a representative of that bureau determines that the proposed appropriation is contrary to the public interest or is inconsistent with the purposes for which such land or materials are reserved, the district manager shall promptly submit the matter to the Secretary of the Interior for his decision. In other instances, the district manager shall notify the Department of Transportation of the requirements and conditions which the State highway department or its nominee must meet.

§ 23.6 Basis for denial of a permit, lease, or contract.

An application or offer for a permit, lease, or contract to conduct exploratory or extractive operations may be denied any applicant or offeror who has forfeited a required bond because of failure to comply with an exploration or mining plan. However, a permit, lease, or contract may not be denied an applicant or offeror because of the forfeiture of a bond if the lands disturbed under his previous permit, lease, or contract have subsequently been reclaimed without cost to the Federal Government.

§ 23.7 Approval of exploration plan.

(a) Before commencing any surface disturbing operations to explore, test, or prospect for minerals covered by the mineral leasing acts the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall consult with the district manager with respect to the surface protection and reclamation aspects before approving said plan.

(b) Before commencing any surface disturbing operations to explore, test, or prospect for materials covered by the Materials Act the operator shall file with the district manager a plan for the proposed exploration operations.

(c) Depending upon the size and nature of the operation and the requirements established pursuant to § 23.5 the mining supervisor or the district manager may require that the exploration plan submitted by the operator include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;

(3) A statement of proposed exploration methods, i.e. drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(d) The mining supervisor or the district manager shall promptly review the exploration plan submitted to him by the operator and shall indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 23.5, the provisions of the regulations in this part, and the terms of the permit.

(e) The operator shall comply with the provisions of an approved exploration plan. The mining supervisor and the district manager may, with respect to

such a plan, exercise the authority provided by paragraphs (f) and (g) of § 23.8 respecting a mining plan.

§ 23.8 Approval of mining plan.

(a) (1) Before surface mining operations may commence under any permit or lease issued under the mineral leasing acts the operator must file a mining plan with the mining supervisor and obtain his approval of the plan. Paragraphs (b) through (g) of this section confer authority upon mining supervisors with respect to mining plans pertaining to permits or leases issued under the mineral leasing acts. The mining supervisor shall consult with the district manager with respect to the surface protection and reclamation aspects before approving said plan.

(2) Before surface mining operations may commence under any permit issued or contract made under the Materials Act, the operator must file a mining plan with the district manager and obtain his approval of the plan. Paragraphs (b) through (g) of this section confer authority upon district managers with respect to mining plans pertaining to permits issued or contracts made under the Materials Act.

(b) Depending on the size and nature of the operation and the requirements established pursuant to § 23.5, the mining supervisor or the district manager may require that the mining plan submitted by the operator include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Two copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit, lease, or contract, the name and location of major topographic and cultural features, and the drainage plan away from the area to be affected;

(3) A statement of proposed methods of operating, including a description of proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife, and hazards to public health and safety; and

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the holder's operation.

(c) In those instances in which the permit, lease, or contract requires the revegetation of an area of land to be affected the mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

(d) In those instances in which the permit, lease, or contract requires regrading and backfilling, the mining plan shall show the proposed methods and the timing of grading and backfilling of areas to be affected by the operation.

(e) The mining supervisor or the district manager shall review the mining plan submitted to him by the operator and shall promptly indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 23.5, the provisions of the regulations in this part and the terms of the permit, lease, or contract. The operator shall comply with the provisions of an approved mining plan.

(f) A mining plan may be changed by mutual consent of the mining supervisor or the district manager and the operator at any time to adjust to changed conditions or to correct any oversight. To obtain approval of a change or supplemental plan the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed. The mining supervisor or the district manager shall promptly notify the operator that he consents to the proposed changes or supplement or, in the event he does not consent, he shall specify the modifications thereto under which the proposed changes or supplement would be acceptable. After mutual acceptance of a change of a plan the operator shall not depart therefrom without further approval.

(g) If circumstances warrant, or if development of a mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

§ 23.9 Performance bond.

(a) (1) Upon approval of an exploration plan or mining plan, the operator shall be required to file a suitable performance bond of not less than $2,000 with satisfactory surety, payable to the Secretary of the Interior, and the bond shall be conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended **or supplemented. The bond shall be in an amount sufficient to satisfy the reclamation requirements of an approved exploration or mining plan, or an approved partial or supplemental plan. In determining the amount of the bond consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the operator forfeits his performance bond.**

(2) In lieu of a performance bond an operator may elect to deposit cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be equal at least to the required sum of the bond.

(b) A bond may be a nationwide or statewide bond which the operator has filed with the Department under the provisions of the applicable leasing regulations in Subchapter C of Chapter II of this title, if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(c) The district manager shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take action with respect to bonds for leases or permits only after consultation with the mining supervisor.

(d) Performance bonds will not be required of Federal, State, or other governmental agencies. Where the exploration or mining is actually performed for such Federal, State, or governmental agencies by a contractor who would have to post a bond under the terms of paragraph (a) of this section if he were the operator, such agencies shall require the contractor to furnish a bond payable to the United States which meets the requirements of paragraph (a) of this section. If, for some other purpose, the contractor furnishes a performance bond, an amendment to that bond which meets the requirements of paragraph (a) of this section will be acceptable in lieu of an additional or separate bond.

§ 23.10 Reports: Inspection.

(a) (1) The holder of a permit or lease under the mineral leasing acts shall file the reports required by this section with the mining supervisor. The holder of a permit or a party to a contract under the Materials Act shall file such reports with the district manager.

(2) The provisions of this section confer authority and impose duties upon mining supervisors with respect to permits or leases issued under the mineral leasing acts and upon district managers with respect to permits issued or contracts made under the Materials Act.

(b) Operations report: Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the operator shall submit an operations report containing the following information:

(1) An identification of the permit, lease, or contract and the location of the operation;

(2) A description of the operations performed during the period of time for which the report is filed;

(3) An identification of the area of land affected by the operations and a description of the manner in which the land has been affected;

(4) A statement as to the number of acres disturbed by the operations and the number of acres which were reclaimed during the period of time;

(5) A description of the method utilized for reclamation and the results thereof;

(6) A statement and description of reclamation work remaining to be done.

(c) Grading and backfilling report: Upon completion of such grading and backfilling as may be required by an approved exploration or mining plan, the

operator shall make a report thereon and request inspection for approval. Whenever it is determined by such inspection that backfilling and grading has been carried out in accordance with the established requirements and approved exploration or mining plan, the district manager shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that satisfactory planting, if required, is carried out.

(d) Planting report: (1) Whenever planting is required by an approved exploration or mining plan, the operator shall file a report with the mining supervisor or district manager whenever such planting is completed. The report shall—

(i) Identify the permit, lease, or contract;

(ii) Show the type of planting or seeding, including mixtures and amounts;

(iii) Show the date of planting or seeding;

(iv) Identify or describe the areas of the lands which have been planted;

(v) Contain such other information as may be relevant.

(2) The mining supervisor or district manager, as soon as possible after the completion of the first full growing season, shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.

(3) If it is determined that a satisfactory vegetative cover has been established and is likely to continue to grow, any remaining portion of the performance bond may be released if all requirements have been met by the operator.

(e) Report of cessation or abandonment of operations: (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall report his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent of reclamation accomplished and other relevant information.

(2) (i) Upon receipt of such report the mining supervisor or the district manager shall make an inspection to determine whether operations have been carried out and completed in accordance with the approved exploration or mining plan.

(ii) Whenever the lands in a permit, lease or contract issued under the mineral leasing acts or the Materials Act are under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management the mining supervisor or the district manager, as appropriate, shall obtain the concurrence of the authorized officer of such bureau that the operation has been carried out and completed in accordance with the approved exploration or mining plan with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond.

(iii) Whenever the lands in a permit, lease or contract issued under the Mineral Leasing Act of 1920 or the Materials Act are under the jurisdiction of an agency other than the Department of the Interior, the mining supervisor or the district manager, as appropriate, shall consult representatives of the agency administering the lands and obtain their recommendations as to whether the operation has been carried out and completed in accordance with the approved exploration or mining plan, with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond. If the mining supervisor or district manager, as appropriate, do not concur in the recommendations of the agency regarding compliance with the surface protection and reclamation aspects of the approved exploration or mining plan, the issues shall be referred for resolution to the Under Secretary of the Department of the Interior and the comparable officer of the agency submitting the recommendations. In the case of disagreement on issues which are so referred, the Secretary of the Interior shall make a determination which shall be final and binding. In cases in which the recommendations are not concurred in by the mining supervisor or district manager, the performance bond shall not be released until resolution of the issues or until a final determination by the Secretary of the Interior.

(iv) Whenever the lands in a permit or lease issued under the Mineral Leasing Act for Acquired Lands are under the jurisdiction of an agency other than the Department of the Interior, the mining supervisor or the district manager, as appropriate, shall obtain the concurrence of the authorized officer of such agency that the operation has been carried out and completed in accordance with the approved exploration or mining plan with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond.

§ 23.11 Notice of noncompliance: Revocation.

(a) The provisions of this section confer authority and impose duties upon mining supervisors with respect to permits or leases issued under the mineral leasing acts and upon district managers with respect to permits issued or contracts made under the Materials Act. The mining supervisor shall consult with the district manager before taking any action under this section.

(b) The mining supervisor or district manager shall have the right to enter upon the lands under a permit, lease, or contract, at any reasonable time, for the purpose of inspection or investigation to determine whether the terms and conditions of the permit, lease, or contract, and the requirements of the exploration or mining plan have been complied with.

(c) If the mining supervisor or the district manager determines that an operator has failed to comply with the terms and conditions of a permit, lease, or contract, or with the requirements of an exploration or mining plan, or with the provisions of applicable regulations under this part the supervisor or manager shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address.

(d) A notice of noncompliance shall specify in what respects the operator has failed to comply with the terms and conditions of a permit, lease, or contract, or the requirements of an exploration or mining plan, or the provisions of applicable regulations, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(e) Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor or the district manager of operations or for the initiation of action for the cancellation of the permit, lease, or contract and for forfeiture of the performance bond required under § 23.9.

§ 23.12 Appeals.

(a) A person adversely affected by a decision or order of a district manager or of a mining supervisor made pursuant to the provisions of this part shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, whenever the decision appealed from was rendered by a district manager, or to the Director of the Geological Survey if the decision or order appealed from was rendered by a mining supervisor, and the further right to appeal to the Board of Land Appeals from an adverse decision of the Director of the Geological Survey unless such decision was approved by the Secretary prior to promulgation.

(b) Appeals to the Board of Land Appeals shall be made pursuant to part 4 of this title. Appeals to the Director of the Geological Survey shall be made in the manner provided in 30 CFR part 290.

(c) In any case involving a permit, lease or contract for lands under the jurisdiction of an agency other than the Department of the Interior, or a bureau of the Department of the Interior other than the Bureau of Land Management, the officer rendering a decision or order shall, in the event of an appeal from such decision or order, designate the authorized officer of such agency as an adverse party on whom a copy of a notice of appeal and any statement of reasons, written arguments or briefs must be served.

(d) Hearings to present evidence on an issue of fact before a Field Commissioner designated by the appropriate Director shall be conducted pursuant to the requirements and procedures set forth in Part 1850 of this title.

§ 23.13 Consultation.

Whenever the lands included in a permit, lease, or contract are under the jurisdiction of an agency other than the Department of the Interior or under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management, the mining supervisor or the district manager, as appropriate, shall consult the authorized officer of such agency before taking any final action under §§ 23.7, 23.8, 23.10 (c) and (d) (2) and (3), and 23.11(c).

This circular replaces Circulars 2259, 2274, 2333, 2341 and that portion of Circular 2273 relating to Part 23.

GPO 851-080

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER D—RANGE MANAGEMENT

[Circular No. 2355]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4114—Advisory Boards and Local Associations

NATIONAL ADVISORY BOARD COUNCIL

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Subpart 4114 of Part 4110 of Chapter II is amended as follows:

Section 4114.3 is revised to read as follows:

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Function and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all resources and uses of the public lands under the jurisdiction of the Bureau of Land Management.

§ 4114.3–2 Membership.

(a) The livestock members of each State Advisory Board shall select from its members, at a meeting of each new term, one member to represent livestock on the National Advisory Board Council. The elected wildlife member on each State Advisory Board will serve on the National Advisory Board Council representing wildlife interests as follows: (1) In odd numbered calendar years, members from Arizona, Colorado, Idaho, Montana, California, and Alaska; (2) in even numbered years, members from New Mexico, Utah, Wyoming, Oregon, Nevada, and Alaska. The State Directors of each of the 10 Western States having grazing districts created under section 1 of the Taylor Grazing Act (43 U.S.C. 315) shall submit a list of nominees selected from nonlivestock and nonwildlife interests in their States. From this list and from other sources as he may determine, the Secretary of the Interior shall appoint 20 members to the National Advisory Board Council as follows: 1 representative from the State of Washington, 1 representative from the State of Alaska, 2 mining representatives, 2 forestry representatives, 2 leasable mineral representatives, 3 outdoor recreation representatives, 2 urban-suburban representatives (including real estate development), 1 environmental quality representative, 1 public information representative, 2 county government representatives, 1 State government representative, 1 soil and water conservation representative, and 1 public utilities representative.

§ 4114.3–3 Meetings.

The Council shall meet at the call of the Secretary of the Interior or his authorized representative and shall elect its own officers. Committees of the Council shall meet at the call of the Director, Bureau of Land Management, or his authorized representative. The Federal representative at all meetings shall be the Director, Bureau of Land Management or his authorized representative.

§ 4114.3–4 Administrative support.

Administrative support of the Council shall be the responsibility of the Director, Bureau of Land Management.

JACK O. HORTON,
Assistant Secretary of the Interior.

DECEMBER 11, 1973.

[FR Doc.73–26602 Filed 12–14–73;8:45 am]

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Circular Distribution List

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2356]

GEOTHERMAL RESOURCES

Leasing on Public, Acquired and Withdrawn Lands

PART 3000—MINERALS MANAGEMENT; GENERAL

1. Section 3000.0–5 of Subpart 3000, Chapter II, Title 43 of the Code of Federal Regulations is revised to read as follows:

§ 3000.0–5 Definitions.

As used in this subchapter:

(a) "Leasable minerals" means oil and gas. (1) Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions. (2) Oil or crude oil means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(b) "Other leasable minerals" means (1) Coal, chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; sulphur in the States of Louisiana and New Mexico; phosphate; and native asphalt, solid and semisolid bitumen and bituminous rock (including oil impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried); (2) solid (hardrock) minerals; minerals in acquired lands which would be subject to location under the U.S. mining laws if located in the public domain lands.

(c) "Secretary" means the Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(d) "Director" means the Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(e) "State Director" means the Director of a Bureau of Land Management State office or any person duly authorized to exercise the powers vested in that officer.

(f) "Authorized officer" means any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

(g) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulation where the term is used.

(h) "Public domain lands" means original public domain lands which have never left Federal ownership; also, lands in Federal ownership which were obtained by the Government in exchange for public lands or for timber on such lands; also original public domain lands which have reverted to Federal ownership through operation of the public land laws.

(i) "Acquired lands" means lands which the United States obtains by deed through purchase or gift, or through condemnation proceedings. They are distinguished from public domain lands in that acquired lands may or may not have been originally owned by the Government. If originally owned by the Government such lands have been disposed of (patented) under the public land laws and thereafter reacquired by the United States.

(j) "Other lands" means (1) "Withdrawn lands." Lands which have been withdrawn and dedicated to public purposes. (2) "Reserved lands." Lands which have been withdrawn from disposal and dedicated to a specific public purpose. (3) "Segregated lands." Lands included in a withdrawal, or in an application or entry or in a proper classification which segregates them from operation of the public land laws.

2. Section 3000.4 of Subpart 3000, Chapter II, Title 43 of the Code of Federal Regulations is revised to read as follows:

§ 3000.4 Appeals.

Any party to a case who is adversely affected by any official action or decision of an officer of the Bureau of Land Management or of an Administrative Law Judge of the Office of Hearings and Appeals, Office of the Secretary, except a decision which has been approved by the Secretary, shall have a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. All appeals shall be governed by the rules of practice in Subpart E of Part 4 of this title. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

3. A new Group 3200 is added to Chapter II, Title 43 of the Code of Federal Regulations to read as follows:

Group 3200—Geothermal Resources Leasing

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

Subpart 3200—Geothermal Resources Leasing; General

Sec.
3200.0–3 Authority.
3200.0–5 Definitions.
3200.0–6 Preleasing procedures.
3200.0–7 Cross reference.
3200.0–8 Use of surface.

Subpart 3201—Available Lands; Limitations; Unit Agreements

Sec.
3201.1 Lands subject to geothermal leasing.
3201.1–1 General.
3201.1–2 Department of the Interior.
3201.1–3 Department of Agriculture.
3201.1–4 Federal Power Commission.
3201.1–5 Patented lands.
3201.1–6 Excepted areas.
3201.2 Acreage limitations.
3201.3 Leases within unit areas.

Subpart 3202—Qualifications of Lessees

Sec.
3202.1 Who may hold leases.
3202.2 Statements required to be submitted.
3202.2–1 General.
3202.2–2 Guardian or trustee.
3202.2–3 Attorney-in-fact.
3202.2–4 Statements previously filed.
3202.2–5 Showing as to sole party in interest.
3202.2–6 Heirs and devisees (estates).
3202.2–7 Fractional present interests.

Subpart 3203—Leasing Terms

3203.1 Primary and additional term.
3203.1–1 Dating of leases.
3203.1–2 Primary term.
3203.1–3 Additional term.
3203.1–4 Extensions.
3203.1–5 Segregation of leases on commitment to, or contraction of cooperative or unit plan or communitization agreement.
3203.1–6 Conversion to mineral leases or mining claims.
3203.2 Lease acreage limitation.
3203.3 Consolidation of leases.
3203.4 Description of lands.
3203.5 Diligent exploration.
3203.6 Plan of operation.

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Circular Distribution List

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3204.5 Compensation for drainage; compensatory royalty.
3204.6 Patented lands.

Subpart 3205—Service Charges, Rentals and Royalties

3205.1 Payments.
3205.1–1 Form of remittance.
3205.1–2 Where submitted.
3205.2 Service charges.
3205.3 Rentals and royalties.
3205.3–1 Payment with application.
3205.3–2 Payment of annual rental.
3205.3–3 Escalating rental rates.
3205.3–4 Fractional interest.
3205.3–5 Royalty on production.
3205.3–6 Royalty on commercially demineralized water.
3205.3–7 Waiver, suspension or reduction of rental or royalty.
3205.3–8 Application for and effect of suspension of operations and production.
3205.3–9 Readjustments.
3205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.
3205.4–1 Prior to production.
3205.4–2 After production.

Subpart 3206—Lease Bonds

3206.1 Types of bonds and filing.
3206.1–1 Types of bonds.
3206.1–2 Filing of bonds.
3206.2 Termination of period of liability.
3206.3 Operators bond.
3206.3–1 Compliance.
3206.3–2 Approval.
3206.3–3 Default.
3206.4 Personal bond or corporate bond.
3206.4–1 Amount.
3206.4–2 Deposit of securities.
3206.4–3 Qualified corporate sureties.
3206.5 Nationwide bond.
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3206.7 Default.
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3206.7–2 Penalty.
3206.8 Applicability of provisions to existing bonds.

Subpart 3207—[Reserved]

Subpart 3208—[Reserved]

Subpart 3209—Geothermal Resources Exploration Operations

Sec.
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3209.4–1 General.
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Subpart 3200—Geothermal Resources Leasing; General

§ 3200.0–3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001–1025) and rights to develop and utilize geothermal resources in land subject to these regulations may be acquired only in accordance with these regulations.

§ 3200.0–5 Definitions.

As used in Group 3200, the term:

(a) "The Act" means the Geothermal Steam Act of 1970.

(b) "Geothermal lease" means a lease issued under authority of the Act; and unless the context indicates otherwise, "lease" means a "geothermal lease".

(c) "Geothermal resources" means geothermal steam and associated geothermal resources which include: (1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines; (2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (3) heat or other associated energy found in geothermal formations; and (4) any byproducts derived from them.

(d) "Byproduct" means (1) any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and (2) commercially demineralized water.

(e) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any interest in the lease.

(f) "Interest in the lease" means any interest whatever in a geothermal lease, including, but not limited to: A record title interest; a working interest; an operating right; an overriding royalty interest; a claim to any prospective or future advantage or benefit from a lease; a participation in any increment, issue, or profit which may be derived, or accrue in any manner, from the lease based upon, or pursuant to, any agreement or understanding in existence at the time when the offer is filed; and an agreement pertaining to any of the foregoing.

(g) "Supervisor" means a representative of the Secretary, subject to the direction and supervision of the Director, the Chief, Conservation Division, Geological Survey and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part or any subordinate of such representative acting under his direction.

(h) "Primary term" means the first 10 years in the life of the lease, exclusive of any period of suspension of operations or production, or both.

(i) "Area of operation" means that area of the leased lands which is required for exploration, development and producing operations, and which is delineated on a map or plat which is made a part of the approved plan of operations. It encompasses the area generally needed for wells, flow lines, separators, surge tanks, drill pads, mud pits, workshops, and other such faciliites used for on-project geothermal resources field exploration, development and production operations.

(j) "Commercial quantities" means quantities sufficient to provide a return after all variable costs of production have been met.

(k) "Known geothermal resource area" or "KGRA" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

(1) In determining whether the geology of an area is of such a nature that the area should be designated a KGRA the Director, Geological Survey, acting for the Secretary, shall use such geologic and technical evidence as he shall deem appropriate, including the following:

(i) The existence of siliceous sinter and natural geysers;

(ii) The temperatures of fumaroles, thermal springs, and mud volcanoes;

(iii) The SiO_2 content of spring water;

(iv) The Na/K ratio in spring waters of hot-water systems;

(v) The existence of volcanoes and calderas of late Teirtary or Quaternary age;

(vi) Conductive heat flows and geothermal gradient;

(vii) The porosity and the permeability of a potential reservoir;

(viii) The results of electrical resistivity surveys;

(ix) The results of magnetic, gravity, and airborne infrared geophysical surveys; and

(x) The information obtained through other geophysical methods such as microseismic, seismic ground noise, electromagnetic, and telluric surveys if such methods prove to have significant use in evaluation.

(2) For purposes of KGRA classification, a "discovery" or "discoveries" will be considered to be any well deemed by the Director, Geological Survey, to be capable of producing geothermal resources in commercial quantities and, where the geological structure is not known, "nearby" will be considered to be five miles or less from any such discovery. Lands nearby a discovery will be classified as KGRA unless the Geological Survey determines that the lands are on a different geologic structure from the discovery. Where the Geological Survey has determined the extent of a structure on which a discovery has been made, all land in that structural area contributing geothermal resources to that discovery will be deemed a KGRA regardless of the distance from the discovery.

(3) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by that application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by any other single application filed

during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this subparagraph (3).

(1) "Primarily valuable" means the principal mineral value for which the leasehold is being produced.

§ 3200.0–6 Preleasing procedures.

(a) When an area is initially considered for geothermal leasing or when the need arises, the Director shall request other interested Bureaus and Federal agencies to prepare reports describing, to the extent known, resources contained within the general area and the potential effect of geothermal resources operations upon the resources of the area and its total environment. If the Director determines that the issuance of leases in an area would be a major Federal action significantly affecting the quality of the human environment, he shall issue no leases in that area unless an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been issued.

(b) Prior to the final selection of tracts for leasing, the Director, or the head of the agency charged with the administration of the surface, if that officer so elects, shall, when appropriate, evaluate fully the potential effect of the geothermal resources operations pursuant to a leasing program on the total environment, fish and other aquatic resocrces, wildlife habitat and populations, aesthetics, recreation, and other resources in the entire area during exploratory, developmental, and operational phases. This evaluation will consider the potential impact of the possible development and utilization of the geothermal resources including the construction of power generating plants and transmission facilities on lands which may or may not be included in a geothermal lease. To aid him in his evaluation and selection of tracts the Director shall request and consider the views and recommendations of appropriate Federal agencies, may hold public hearings after appropriate notice, and shall, as appropriate, consult with State agencies, organizations, industries, and lease applicants, and shall consider all other potential factors, such as use of the land and its natural resources, the need for the energy mineral deposits, and socio-economic conditions consistent with multiple-use management principles. If a decision is made to lease, the Director shall develop special terms and conditions to be included in leases as required to protect the environment, to permit use of the land for other purposes, and to protect other natural resources. If tracts are offered for competitive leasing, the notice announcing the availability of the land for leasing will specify the proper BLM office where all terms and conditions to be included in leases for such tracts are available.

§ 3200.0–7 Cross reference.

(a) The regulations governing operations under geothermal leases are found in 30 CFR Part 270 .

(b) The regulations setting forth the basic policies for management of the public lands are found in Part 1725 of this chapter.

§ 3200.0–8 Use of surface.

(a) A lessee shall be entitled to use for the production, utilization, and conservation of geothermal resources only so much of the surface of the leased Federal lands as is deemed necessary for such purposes. The lessee shall have the right to use so much of the leased lands as may be deemed necessary for a power generation plant or a commercial or industrial facility, and may apply for the right to use so much of other Federal lands as may be deemed necessary for such purposes; however, any use of the leased lands or other Federal lands for a power generation plant or a commercial or industrial facility will be authorized only under a separate permit issued by the appropriate agency for that specific use and subject to all terms and conditions which it may include in that permit. The uses of the lands within the area of operation are subject to the supervision of the supervisor, and the uses of the remaining leased lands or other Federal lands are subject to the supervision of the appropriate surface management agency. The lessee shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this chapter.

(b) Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these regulations nor shall operations under these regulations unreasonably interfere with or endanger operations under any lease, license, claim, permit, or other authorized use pursuant to the provisions of any other Act.

Subpart 3201—Available Lands; Limitations, Unit Agreements

§ 3201.1 Lands subject to geothermal leasing.

§ 3201.1–1 General.

Subject to the exceptions listed below, geothermal leases may be issued in combination or separately for (a) lands administered by the Secretary of the Interior; (b) national forest lands or other lands administered by the Department of Agriculture through the Forest Service; and (c) geothermal resources in lands which have been conveyed by the United States subject to a reservation to the United States of geothermal resources.

§ 3201.1–2 Department of the Interior.

(a) Except as provided in this section, leases may be issued in accordance with the regulations in this part for withdrawn lands, for acquired lands, and for geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of the geothermal resources therein where such lands or resources are administered by the Secretary of the Interior.

(b) Notwithstanding any other provision in these regulations, geothermal leases shall not be issued for: (1) Lands which the Secretary has identified or may identify as being necessary to the performance of his or any other Federal officer's authorized functions, and on which geothermal resource development would in his judgment interfere with such functions; or (2) lands respecting which the Secretary has made or may make a finding that the issuance of geothermal leases would be contrary to the public interest. Upon receipt of an application for a geothermal lease affecting lands withdrawn under section 3 of the Reclamation Act of 1902 (43 U.S.C. 416) or any other appropriate authority, notice thereof and an opportunity to comment thereon shall be given to the head of the agency for whose benefit the withdrawal was made. No geothermal lease affecting lands withdrawn for any agency outside the Department of the Interior shall be leased without the consent of the head of the agency for which the lands are withdrawn. Where leases are issued under Part 3210 of this chapter or 3220 for lands neighboring such reserved lands, the lessees shall be required to perform such lease operations and take such measures as are prescribed by the Secretary for the protection of the Federal interests therein.

§ 3201.1–3 Department of Agriculture.

Leases for public, withdrawn or acquired lands administered by the Forest Service, may be issued by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purpose for which they were withdrawn or acquired.

§ 3201.1–4 Federal Power Commission.

Leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued by the Secretary of the Interior only with the consent of, and subject to, such terms and conditions as the Federal Power Commission may prescribe to insure adequate utilization of such lands for power and related purposes.

§ 3201.1–5 Patented lands.

(a) Geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of geothermal resources therein may be leased under the regulations in this group subject to the provisions in this part and to such terms and conditions as may be prescribed by the authorized officer to insure adequate protection of the patented lands and any improvements thereon.

(b) Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under terms and conditions prescribed by the Secretary and pursuant to any agreements made therefor while the question of the title to such resources is being resolved pursuant to the provisions of section 21(b) of the Act.

§ 3201.1–6 Excepted areas.

Leases shall not be issued for lands which are: (a) Administered under the

National Park System; (b) within a national recreation area; (c) in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, or waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife which are designated as rare and endangered species by the Secretary; or under active consideration for inclusion in categories (a), (b), or (c) as evidenced by the filing of an application for a withdrawal or a proposed withdrawal; or (d) tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations.

§ 3201.2 Acreage limitations.

(a) *Maximum holdings.* No citizen, association, corporation, or governmental unit shall take, hold, own, or control at one time, whether acquired directly from the Secretary or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 20,480 acres, including leases acquired under the provisions of section 4 (a)–(f) of the Act. Nor may any citizen, association, or corporation be permitted to convert mineral leases, permits, applications therefor, or mining claims, pursuant to the provisions of section 4 (a)–(f) of the Act into geothermal leases for more than 10,240 acres.

(b) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be that party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of that association or corporation. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(1) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each colessee will be charged with his proportionate interest in the lease.

(2) Lessees holding acreage in common shall be considered a single entity and cannot hold acreage in excess of the maximum specified in the law for any one lessee.

(c) *Excepted acreage.* Leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases subject to an operating, drilling or development contract approved by the Secretary pursuant to section 18 of the Act, other than communization or drilling agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(d) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation.

(2) If any person holding or controlling leases or interests in leases is found to hold accountable acreage in violation of the provisions of this section and of the Act, the last lease or leases or interest or interests acquired by him which created the excess acreage holdings shall be canceled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application which causes him to exceed the acreage limitation, that application will be rejected.
(ii) If he files a group of applications at the same time, any one of which causes him to exceed the acreage limitation, the entire group of applications will be rejected.

(4) If any person holding or controlling leases or interests in leases below the acreage limitation provided in this section, acquires a lease or leases, or an interest or interests therein, which cause him to exceed the acreage limitation, his most recently filed application for lease or applications for leases then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the date of filing marked on the application, or, if the same date is marked on two or more applications, by the serial number of the applications.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the applicant, operator, or transferee is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer, the record title holder of any lease or a lease operator or a lease applicant may be required to file in the proper BLM office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, and each application for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any geothermal lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

§ 3201.3 Leases within unit areas.

Before issuance of a geothermal lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to perform his operations in a manner which the Supervisor deems to be consistent with the unit operations.

Subpart 3202—Qualifications of Lessees

§ 3202.1 Who may hold leases.

Leases may be issued only to: (a) Citizens of the United States who have reached the age of majority; (b) associations of such citizens; (c) corporations organized under the laws of the United States, any state or the District of Columbia; or (d) governmental units, including, without limitation, municipalities. The term "association" includes a partnership.

§ 3202.2 Statements required to be submitted.

§ 3202.2–1 General.

(a) Each applicant for a lease is required to submit with his application a statement that his interests, direct and indirect, in Federal geothermal leases do not exceed the acreage limitations prescribed in § 3201.2, together with a statement of his citizenship.

(b) If the applicant is an association or corporation the application must be accompanied by: (1) A statement showing that it is authorized to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the association or corporation; (3) a statement setting forth the State in which it was incorporated or formed and the names and addresses of all members or stockholders holding more than 10 percent of the association or corporation; and (4) a statement from each person owning or controlling more than 10 percent of the association or corporation setting forth his citizenship and his holdings.

(c) If the applicant is a municipality, or governmental unit, the application must be accompanied by: (1) A statement showing that it is authorized to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the municipality or governmental unit, and (3) a copy of its governing body's resolution authorizing such action.

§ 3202.2–2 Guardian or trustee.

(a) *Guardian.* If the application is made by a guardian, he must submit: (1) A certified copy of the court order authorizing him to act as guardian and, in behalf of his ward, to enter into contractual agreements and to fulfill all obligations arising under the lease; and (2) statements as to the citizenship and holdings under the Act of himself and of

each person under his guardianship for whom the application is made.

(b) *Trustee.* If the application is made by a trustee, he must submit a copy of the instrument establishing the trust or a certified copy of the court order authorizing him to act as trustee, in behalf of the beneficiary, as to all obligations arising under the lease; and statements as to the citizenship and holdings under the Act of himself and of each beneficiary.

§ 3202.2–3 Attorney-in-fact.

If an application is filed by an attorney-in-fact, it must be accompanied by a statement as to his authority to act.

§ 3202.2–4 Statements previously filed.

Where the statements required by § 3202.2 have been previously filed a reference by serial number to the record in which they have been filed, together with a statement as to any amendments will be accepted.

§ 3202.2–5 Showing as to sole party in interest.

Each application must indicate whether the applicant is the sole party in interest. Where the applicant is not the sole party in interest, separate statements must be signed by each of the parties and by the applicant setting forth the nature of the agreement between them. All interested parties must furnish evidence of their qualifications to hold such lease interest. These separate statements must be filed in the proper BLM office with the application, except as provided in § 3211.2 of this chapter.

§ 3202.2–6 Heirs and devisees (estates).

If an applicant or a successful bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an application to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application filed by the deceased. If there are any minor heirs or devisees, the application can only be made by their legal guardian or trustee in his name. Each such application must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the application, and bond form if a bond is required, has authority to act in that capacity and to sign the application and bond forms.

(2) A statement over the signature of each heir or devisee or, if the heir or devisee is a minor, over the signature of his legal guardian or trustee, concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or successful bidder and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or successful bidder and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship. If the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3202.2–7 Fractional present interests.

(a) An application for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the applicant's ownership of the operating rights to the fractional geothermal resources interest not owned by the United States in each tract covered by the application to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an application leading to such results will be rejected.

(b) Geothermal resources in lands which have passed from Federal ownership but which lands have been purchased by the Federal Government with a fractional interest in the geothermal resources shall not be developed or produced, except under prescribed terms and conditions and pursuant to any agreement made between the parties of interest prior to the resolution of the question of ownership of the geothermal resources.

Subpart 3203—Leasing Terms

§ 3203.1 Primary and additional term.

§ 3203.1–1 Dating of leases.

All geothermal leases will be dated as of the first day of the month following the date on which the leases are signed on behalf of the lessor except that, where prior written request has been made, a lease may be dated as of the first day of the month within which it is so signed. A renewal lease will be dated from the termination of the original lease.

§ 3203.1–2 Primary term.

All leases shall be for a primary term of 10 years.

§ 3203.1–3 Additional term.

(a) If geothermal steam is produced or utilized in commercial quantities within the primary term of a lease, that lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but the lease shall in no event continue for more than 40 years after the end of the primary term except that the lessee shall have a preferential right to a renewal of his lease for a second 40-year term upon such terms and conditions as the authorized officer deems appropriate, if at the end of the first 40-year term the lands are not needed for another purpose and geothermal steam is produced or utilized in commercial quantities. Production or utilization of geothermal steam in commercial quantites shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than 15 years from the date of commencement of the primary term of the lease.

§ 3203.1–4 Extensions.

(a) A lease which has been extended by reason of production, or on which geothermal steam has been produced, and which has been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended so long as one or more valuable byproducts are produced in commercial quantities but for not more than 5 years.

(b) Where the lessee commenced actual drilling operations prior to the end of the primary term and those operations are being diligently prosecuted at that time, a lease shall be extended for a period of five years and so long thereafter as geothermal steam is produced or utilized in commercial quantities (but for not more than 35 years).

(c) A lease committed to a cooperative plan, communitization agreement or a unit plan under or for which actual drilling operations were commenced prior to the end of the primary term of the lease, shall, if such operations are being diligently prosecuted at that time be extended for a period of five years and so long thereafter as geothermal steam is produced or utilized in commercial quantities (but for not more than thirty five years).

(d) Any lease on which there has been a suspension of operations or production, or both, under 30 CFR 270.17 shall continue in effect for the life of the suspension and, at the end of the suspension, shall be extended for a period equal to that portion of the primary term during which the suspension was in effect.

(e) If, at the end of 40 years after the conclusion of the primary term, steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of the lease for a second 40-year term on such terms and conditions as the Secretary deems appropriate.

§ 3203.1–5 Segregation of leases on commitment to, or contraction of, cooperative or unit plan or cummunitization or drilling agreement.

(a) Any lease committed to any cooperative plan, communitization agreement, drilling agreement, or unit plan, which covers lands within and lands outside the area covered by the plan or agreement, shall be segregated, as of the effective date of that plan or agreement, into separate leases, one covering the lands committed to that plan or agreement and the other as to the lands not so committed. The segregated lease covering the portion of the lands not subject to that plan or agreement shall not be entitled to an extension by reason of the segregation, but the term of the lease

of such segregated lands shall be as provided in the original lease.

(b) When only part of the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the part of the lease which is excluded and the part which remains subject to the plan or agreement shall be segregated into separate leases. The term of the segregated lease composed of the excluded land shall not be extended because of production in commercial quantities or the existence of a producible well on the segregated lease remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were at the time of contraction being conducted on that other lease, but the term of the lease composed of the excluded land shall be as provided in the original lease.

(c) Where all the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the term of the lease shall not be extended because of production in commercial quantities or the existence of a producible well on the lands remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were being conducted on the other lands, but the term of the lease shall be as provided in the original lease.

(d) Contraction of a unit or cooperative plan or a communitization or drilling agreement causing all or part of the land in the lease to be excluded from such plan or agreement shall not serve to extend the term of such lease excluded by reason of the contraction where the 10-year primary term has already expired.

§ 3203.1–6 Conversion to mineral leases or mining claims.

(a) If the byproducts capable of being produced in commercial quantities are leasable under the Mineral Leasing Act of February 25, 1920 as amended and supplemented (30 U.S.C. sections 181–287), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. sections 351–359), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under and subject to all the terms and conditions of the appropriate act, provided the lands and its resources are available for this purpose, upon application at any time before expiration of the lease extension by reason of byproduct production.

(b) The lessee shall be entitled to locate under the mining laws all minerals which are not leasable and which would constitute a byproduct if commercial production or utilization of geothermal steam continued. The lessee, to acquire the rights herein granted him, shall complete the location of mining claims within 90 days after the termination of the geothermal lease, provided the lands and its resources are available for location.

(c) Any lease converted under paragraphs (a) or (b) of this section affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by that department or agency with respect to the additional operations or effects resulting from such conversion upon the utilization of the lands for the purpose for which they are administered.

§ 3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. Where a departure is occasioned by an irregular subdivision, the leased acreage may exceed 2,560 acres by an amount which is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision were excluded. No lease will be issued for less than 640 acres, except at the discretion of the Secretary, or where a departure is occasioned by an irregular subdivision, or as provided for in Subpart 3230 of this chapter. In event of a departure, the leased acreage may be less than 640 acres by amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(b) The authorized officer may add isolated tracts in nearby sections, notwithstanding the 640-acre minimum, where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands will not cause the lessee to exceed the maximum acreage limitation as provided in § 3201.2(a) of this chapter. However, prior to the issuance of such a lease based on the application as amended by the authorized officer, the applicant will be given the option to refuse such a lease. Failure of the applicant to execute and return the lease within 30 days after receipt thereof will constitute a withdrawal of his application, as amended, without further notice.

§ 3203.3 Consolidation of leases.

Two or more contiguous leases issued to the same lessee may be consolidated if the total combined acreage does not exceed 2,560 acres. Except where a deacreage is caused by an irregular subdivision or subdivisions as stated in § 3203.2.

§ 3203.4 Description of lands.

Applications and nominations shall include a description of the lands sought to be included in a geothermal lease.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application or nomination shall describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys or to a prominent topographic feature. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, each application or nomination for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease applications embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the applicant finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his application into the water a distance sufficient to permit complete enclosure of the water boundary of his application by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the application). The description in the lease application shall in all other respects conform to the requirements of paragraph (b) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the application. The applicant shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that application will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3201.2 of this chapter and the maximum or minimum area to be included in a lease pursuant to § 3203.2. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3203.5 Diligent exploration.

Each geothermal lease will include provisions for the diligent exploration of the leased resources until there is production in commercial quantities applicable to the lands subject to the lease,

and failure to perform such exploration may subject the lease to termination. Diligent exploration means exploration operations (subsequent to the issuance of the lease) on, or related to the leased lands, including, but not limited to, operations such as geochemical surveys, heat flow measurements, core drilling, or drilling of a test well. Exploration operations, in order to qualify as diligent exploration, must be approved by the Supervisor, and evidence of all expenditures therefor and the results thereof must be submitted annually to the Supervisor in compliance with applicable regulations and Geothermal Resources Operational (GRO) Orders or upon his request. Moreover, after the fifth year of the primary lease term, exploration operations, to qualify as diligent exploration for a year, must entail expenditures during that year equal to at least two times the sum of (a) the minimum annual rental required by statute, and (b) the amount of rental for that year in excess of the fifth year's rental, but in no event shall the required expenditures exceed twice the rental for the 10th year. However, any expenditures for diligent operations during the first 5 years of the lease and any expenditures for diligent operations during any subsequent year in excess of the minimum required expenditures for that year may be credited, in such proportions as the lessee may designate, against (1) expenditures needed to qualify exploration operations as diligent operations for future years, or (2) any rental requirement for that or any future years in excess of the fifth year's rental pursuant to § 3205.3–3 of this chapter. In all cases, the lessee must pay the basic annual rental specified in the lease for the initial five years of the primary term until there is production of geothermal steam in commercial quantities on the leased lands.

§ 3203.6 Plan of operation.

A lessee will be required to submit a plan of operation pursuant to 30 CFR 270.34, prior to entry upon the leased lands for any purpose other than casual use as that term is defined in § 3209.0–5 (d) of this chapter. Operations will not be permitted on the lands until the plan of operation has been approved.

Subpart 3204—Surface Management Requirements, Special Requirements

§ 3204.1 General.

A lessee shall comply with and be bound by the following general terms and conditions, the specific requirements contained in the lease stipulations and any GRO orders that may be issued pursuant to 30 CFR 270.11. Assuring compliance with the requirements of this section is the responsibility of the Supervisor as to the lands within the area of operations and is the responsibility of the appropriate land management agency as to the remaining lands in the lease.

(a) *Equal employment opportunity.* The lessee shall comply with Executive Order 11246, as amended, 30 F.R. 12319 (1965), and regulations issued pursuant thereto, 41 CFR Chapter 60 and 43 CFR Part 17.

(b) *Public access.* (1) The lessee shall permit free and unrestricted public access to and upon the leased lands for all lawful and proper purposes except in areas where such access would unduly interfere with operations under the lease or would constitute a hazard to health and safety. Restrictions on access will not be allowed without prior approval.

(2) During construction, the lessee shall regulate public access and vehicular traffic to protect the public, wildlife, and livestock from hazards associated with the project. For this purpose, the lessee shall provide warnings, fencing, flag men, barricades, and other safety measures as appropriate.

(c) *Pollution abatement.* The lessee shall comply with all Federal and State standards and all applicable local standards with respect to the control of all forms of air, land, water, and noise pollution, including, but not limited to, the control of erosion and the disposal of liquid, solid, and gaseous wastes. The Supervisor may, in his discretion, establish additional and more stringent standards, and, if he does so, the lessee shall comply with those standards. The lessee, in addition to any other action required by those standards, shall take the following specific actions:

(1) *Pesticides and herbicides.* The lessee shall comply with all rules issued by the Department of the Interior and the Environmental Protection Agency pertaining to the use of poisonous substances on public lands.

(2) *Water pollution.* The lessee shall conduct lease operations and maintenance in accordance with Federal and State water quality standards and public health and safety standards, and applicable local water quality standards and public health and safety standards. Toxic materials shall not be released into any surface waters or underground waters. Reinjection of waste geothermal fluids into geothermal or other suitable aquifers will be permitted upon approval of the lessee's plan of operation submitted pursuant to 30 CFR 270.34.

(3) *Air pollution.* The lessee shall control emissions from operations in accordance with Federal and State air quality standards, and applicable local air quality standards.

(4) *Erosion control.* The lessee shall minimize disturbance to vegetation, drainage channels, and streambanks. The lessee shall employ such soil and resource conservation and protection measures on the leased lands as the Supervisor deems necessary.

(5) *Noise control.* The lessee shall control noise emissions from operations. in accordance with Federal and State noise emission standards, and applicable local noise emission standards.

(d) *Sanitation and waste disposal.* The lessee shall remove or dispose of all waste material generated in connection with the exploration, development, production and transportation operations in a manner set forth in the approved plan of operation submitted pursuant to 30 CFR 270.34.

(e) *Land subsidence, seismic activity.* The lessee shall take precautions necessary to minimize land subsidence or seismic activity which could result from production of geothermal resources and the disposal of waste fluid where such activity could damage or curtail the use of the geothermal resources or other resources, or other uses of the land and take such measures as stipulated to: (1) monitor operations for land subsidence and for seismic activity; and (2) maintain, and when requested, make available to the lessor, records of all monitoring activities.

(f) *Aesthetics.* The lessee shall take aesthetics into account in the planning, design, and construction of facilities on the leased premises.

(g) *Fish and wildlife.* The lessee shall employ such measures as are deemed necessary to protect fish and wildlife and their habitat.

(h) *Antiquities and historical sites.* The lessee shall conduct activities on discovered, known or suspected archeological, paleontological, or historical sites in accordance with lease terms or specific instructions.

(i) *Restoration.* The lessee shall provide for the restoration of all disturbed lands in an approved manner.

(j) The lessee shall submit annual reports to the authorized officer on compliance with the requirements of paragraphs (b)–(i) of this setcion and report within 24 hours, and if the report is oral, shall confirm the report in writing within 30 days, any significant environmental damage suffered by the lands subject to his lease. However, if, after drilling operations have begun, the lessee is required to submit a similar report under 30 CFR 270.30 and 270.76, he may fulfill the requirement of this subsection by submitting to the authorized officer a copy of that report.

§ 3204.2 Waste prevention.

All leases shall be subject to the condition that the lessee will, in conducting his exploration, development. and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands.

§ 3204.3 Readjustment of terms and conditions.

(a) (1) Except as otherwise provided by law, the terms and conditions of any geothermal lease may be readjusted as determined by the authorized officer at not less than 10-year intervals beginning 10 years after the date geothermal steam is produced. Each lease shall provide for such readjustments.

(2) The authorized officer shall give notice to the lessee of any proposed readjustment of the terms and conditions of the lease and the nature thereof, and unless the lessee files with the authorized officer an objection to the proposed terms and conditions or relinquishes the lease within 30 days after receipt of such notice, the lessee shall be deemed conclusively to have agreed to such terms and conditions. If the lessee files objections, and agreement cannot be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files objections to

the proposed readjusted terms and conditions, the existing terms and conditions, except for those concerning rental and royalty rates, will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated. The readjustment of any terms concerning rental and royalty rates will be subject to § 3205.3 of this chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

§ 3204.4 Reservation to the United States of oil, hydrocarbon gas, and helium.

The United States reserves the ownership of and the right to extract oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under the Act. Whenever the right to extract oil, hydrocarbon gas, and helium, from geothermal steam and associated geothermal resources produced from such lands is exercised, it shall be exercised so as to cause no substantial interference with the production of geothermal resources from such lands.

§ 3204.5 Compensation for drainage; compensatory royalty.

(a) Upon a determination by the Supervisor that lands owned by the United States are being drained of geothermal resources by wells drilled on adjacent or cornering lands, the authorized officer may execute agreements with the owners of adjacent or cornering lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

(b) Where land in any lease is being drained of its geothermal resources by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Supervisor, pay compensatory royalty in the amount determined in accordance with 30 CFR Part 270.

§ 3204.6 Patented lands.

The terms and conditions of any geothermal resource lease for lands conveyed by the United States subject to a reservation to the United States of geothermal resources may be readjusted upon notification to the surface owner.

Subpart 3205—Service Charges, Rentals and Royalties

§ 3205.1 Payments.

§ 3205.1–1 Form of remittance.

Remittances required under these regulations may be made by cash payment, check, certified check, bank draft, bank cashier's check, or money order. All remittances will be deposited as received.

§ 3205.1–2 Where submitted.

(a) *Rentals on nonproducing leases.* Rentals under all nonproducing leases issued shall be paid at the proper BLM office. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management.

(b) *Other payments.* All royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Supervisor. All remittances to the Supervisor shall be made payable to the U.S. Geological Survey.

§ 3205.2 Service charges.

(a) *Competitive lease applications.* No service charge is required.

(b) *Noncompetitive lease applications.* Applications for noncompetitive leases must be accompanied by a nonrefundable service charge of $50 for each application.

(c) *Assignments.* Applications for approval of an assignment of a lease or interest therein must be accompanied by a nonrefundable service charge of $50 for each application.

(d) *Nominations.* No service charge is required.

§ 3205.3 Rentals and royalties.

§ 3205.3–1 Payment with application.

Each application, except an application filed pursuant to Subpart 3211 of this chapter, of this part, must be accompanied by payment of the first year's rental of $1 per acre or fraction thereof based on the total acreage included in the application. An application accompanied by a payment of the first year's rental which is deficient by not more than 10 percent will be approved by the authorized officer provided all other requirements are met, but, if the additional rental is not paid within 30 days from notice, the application or the lease, if issued, will be canceled. If the annual rental rate established for the lease to be issued is more than $1 per acre or required to submit the additional rental fraction thereof, the applicant will be prior to issuance of the lease upon notice from the authorized officer.

§ 3205.3–2 Payment of annual rental.

(a) Annual rental in the amount specified in the lease which shall be not less than $1 per acre or fraction thereof must be paid in advance and must be received by the proper BLM office on or before the anniversary date of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law, except as provided by § 3244.2 of this chapter.

(b) If, on the anniversary date of the lease, less than a full year remains in the lease term, the rentals shall be payable in the same proportion as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional month remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(c) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the 1st day of the first month following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation. However, if the anniversary date occurs before the end of the notice period, the rental for the following lease year shall nevertheless be due on the anniversary date and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law except as provided by § 3244.2 of this chapter. The lessee shall not be relieved of liability for rental due for the balance of the previous lease year.

(d) If the payment is due on a day in which the proper BLM office to receive payment is not open, payment received on the next official working day will be deemed to be timely.

§ 3205.3–3 Escalating rental rates.

To encourage the orderly and timely development of geothermal leases, all leases issued pursuant to the regulations in this Group will provide that, beginning with the sixth year and for each year thereafter until the lease year beginning on or after the commencement of production of geothermal resources in commercial quantities, the rental will be set by the authorized officer as the amount of rental for the preceding year plus an additional rental of $1 per acre, or fraction thereof, but the authorized officer may, upon a showing of sufficient justification by the lessee, waive the payment of all or any portion of the additional rental.

§ 3205.3–4 Fractional interests.

Rentals, minimum royalties, and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties, and royalties provided for in § 3205.3, as the undivided fractional interest of the United States in the geothermal resources is to the full geothermal resources interest.

§ 3205.3–5 Royalty on production.

Royalty shall be paid at the following rates on geothermal resources:

(a) A rate, as set forth in the lease, of not less than 10 per centum and not more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee; (b) a rate as set forth in the lease, of not more than 5 per centum of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act; (c) in no

event shall the royalty on any producing lease for any lease year, commencing with the lease year beginning on or after the commencement of production in commercial quantities, be less than $2 per acre or fraction thereof, and this minimum royalty, in lieu of rental, shall be payable at the expiration of each lease year.

§ 3205.3–6 Royalty on commercially demineralized water.

All geothermal leases issued pursuant to the provisions of this group shall provide for the payment to the lessor of a royalty on commercially demineralized water at a rate to be specified in the lease of not more than 5 per centum of the value of such commercially demineralized water that has beeen sold or utilized by the lessee or is reasonably susceptible of sale or utilization by the lessee, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise.

§ 3205.3–7 Waiver, suspension or reduction of rental or royalty.

(a) The authorized officer may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms. No waiver, suspension or reduction of rental or royalty will be granted where the only reason for the request for such relief is the unavailability of power generating facilities to utilize the geothermal steam.

(b) An application hereunder shall be filed in triplicate with the Supervisor, and must: (1) Contain the serial number of the leases and the names of the lessee and operator; (2) show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of production subject to royalty computed in accordance with the operating regulations, the number of wells counted as producing each month, and the average production per well per day; (3) contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products and all facts tending to show whether the wells can be successfully operated using the royalty or rental fixed in the lease; and (4) where the application is for a reduction in royalty, furnish full information as to whether royalties or payments out of production are paid to others than to the United States, the amounts so paid, and the efforts made to reduce them. The applicant must also file agreements of the holders to a comparable reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3205.3–8 Application for and effect of suspension of operations and production.

(a) Applications by lessees for suspensions of operations or production, or both, under a producing geothermal lease (or for relief from any drilling or producing requirements of such a lease) shall be filed in triplicate with the Supervisor, who is authorized to act on applications filed pursuant to this section and to terminate suspensions which have been or may be granted. Complete information must be furnished showing the necessity of the relief sought.

(b) A suspension shall take effect as of the time specified in the order of the Supervisor. Rental or minimum royalty payments will be suspended during any period of suspension of all operations and production directed, or assented to, by the Supervisor, beginning with the first day of the lease month in which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental or minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(c) No lease shall be deemed to expire by reason of a suspension of either operations or production, pursuant to any order or assent of the Supervisor.

(d) If there is a well on the leased premises capable of producing geothermal resources and all operations and production are suspended pursuant to any order of the Supervisor, approval of recommencement of drilling operations will terminate the suspension as to operations but not as to production, and will terminate both the period of suspension of rental and minimum royalty payments provided in paragraph (b) of this section and the period of suspension for which an equivalent extension will be granted. However, as provided in paragraph (c) of this section, the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(e) The relief authorized under this section may also be obtained for any leases included within an approved unit or cooperative plan of development and operation.

(f) See 30 CFR 270.17 for regulations concerning action of the Supervisor on applications filed pursuant to this section.

§ 3205.3–9 Readjustments.

The rentals and royalties of any geothermal lease may be readjusted at not less than 20-year intervals beginning 35 years after the date geothermal steam is produced as determined by the Supervisor. In the event of any such readjustment neither the rental nor royalty paid during the preceding period shall be increased by more than 50 per centum, and in no event shall the royalty payable exceed 22½ per centum. Each geothermal lease shall provide for such readjustment. The Supervisor will give notice of any proposed readjustment of rental or royalties. Unless the lessee relinquishes the lease within 30 days after receipt of such notice, he shall conclusively be deemed to have agreed to such terms and conditions. If the lessee files a protest, and no agreement can be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties must be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions will be effective as of the end of the term being adjusted.

§ 3205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.

§ 3205.4–1 Prior to production.

All lands within any lease committed to an approved cooperative or unit plan shall at all times prior to production on any of the lands so committed remain subject to rental in accordance with § 3205.3.

§ 3205.4–2 After production.

As soon as production is obtained on or for any lands included in an approved cooperative or unit plan those lands which are included within the participating area of the producing well shall become liable for royalties in accordance with Subpart 3205. All other unitized lands, shall remain subject to rental in accordance with § 3205.3.

Subpart 3206—Lease Bonds

§ 3206.1 Types of bonds and filing.

§ 3206.1–1 Types of bonds.

(a) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties may be furnished for the protection of the entryman or owner of the surface rights.

(b) Lease compliance bond. The applicant for a noncompetitive lease or the successful bidder for a competitive lease must furnish, prior to the issuance of the lease, and thereafter maintain a bond of not less than $10,000 conditioned on compliance with all the terms of the lease.

(c) Protection bond. A lessee will be required, prior to entry on the leased lands, to furnish and maintain a bond of not less than $5,000 for indemnification for all damages occasioned to persons or property as the result of lease operations.

§ 3206.1–2 Filing of bonds.

A single original copy of the bond on forms approved by the Director must be filed in the proper BLM office. Bonds may be filed with a noncompetitive lease application to expedite action thereon, or within 30 days after receipt of notice by the applicant of the bond requirement, or as required and directed by the authorized officer. For unit bond forms see 30 CFR Part 271.

§ 3206.2 Termination of period of liability.

The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled.

§ 3206.3 Operator's bond.

§ 3206.3–1 Compliance.

An operator, or, if there are more than one for different portions of the lease, each operator may furnish a general lease bond of not less than $10,000 in his own name as principal on the bond in lieu of the lessee. Where there is more than operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold.

§ 3206.3–2 Approval.

An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

§ 3206.3–3 Default.

Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond.

§ 3206.4 Personal bond or corporate bond.

§ 3206.4–1 Amount.

In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

§ 3206.4–2 Deposit of securities.

Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

§ 3206.4–3 Qualified corporate sureties.

Treasury lists. A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6–13), as acceptable sureties on Federal bonds is published in the FEDERAL REGISTER annually.

§ 3206.5 Nationwide bond.

In lieu of bonds required under any of the preceding paragraphs, the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessee pending departmental approval of operating agreements may furnish a bond the amount of which must be not less than $150,000 for full nationwide coverage for all geothermal leases.

§ 3206.6 Statewide bond.

In lieu of any of the bonds required by the preceding paragraphs, the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessee pending Departmental approval of operating agreements, may furnish a statewide bond, applicable to the State in which the leases are situated, the amount of which must be not less than $50,000.

§ 3206.7 Default.

§ 3206.7–1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3206.7–2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by that bond, the principal shall post a new nationwide bond in the amount of $150,000 or a new statewide bond in the amount of $50,000 as the case may be, within 6 months after notice, or within such shorter period as the authorized officer may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3206.8 Applicability of provisions to existing bonds.

The provisions of these regulations may be made applicable to any oil and gas nationwide or statewide bond in force at the effective date of these regulations by filing in the proper BLM office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of these regulations.

Subpart 3207—[Reserved]

Subpart 3208—[Reserved]

Subpart 3209—Geothermal Resources Exploration Operations

§ 3209.0–1 Purposes.

(a) The regulations in this Subpart establish procedures to be followed in conducting exploration operations on the public land for geothermal resources. The regulations in this subpart are not applicable to exploration operations conducted pursuant to a geothermal resources lease.

(b) The rights obtained under this subpart do not include an exclusive right to prospect for geothermal resources on the land described in a Notice of Intent or any preference right to a geothermal resources lease.

§ 3209.0–2 Objectives.

The regulations in this Subpart encourage exploration of the public lands for geothermal resources in a manner that is consistent with the management policy set forth in § 1725.3 of this chapter. No exploration operations will be allowed if the authorized officer determines that such operations would be inconsistent with that policy. The authorized officer may suspend or terminate exploration operations upon due notice to the operator at any time if he determines that there is non-compliance with the terms and conditions of the Notice of Intent.

§ 3209.0–5 Definitions.

As used in this subpart:

(a) "Exploration operations" means any activity relating to the search for evidence of geothermal resources which requires physical presence upon public lands and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, drilling of shallow temperature gradient wells, construction of roads and trails, and cross-country transit by vehicle over public lands. It does not include the casual use of public lands for geothermal resources exploration. It does not include core drilling for subsurface geologic information, except drilling of shallow temperature gradient wells, or drilling for geothermal resources; these activities will be authorized only by the issuance of a geothermal resources lease. The regulations in this Subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right of a lessee to drill for geothermal resources upon the land subject to his lease.

(b) "Notice of Intent" means a "Notice of Intent and Permit to Conduct Exploration Operations (Geothermal Resources)."

(c) "Public lands" means lands owned by the United States and administered by the Bureau of Land Management. It does not include a retained mineral interest in lands, title to which has passed from the United States.

(d) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use."

§ 3209.1 Notice of intent and permit to conduct exploration operations (Geothermal Resources).

§ 3209.1–1 Application.

(a) *Forms and where filed.* Any persons desiring to conduct exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file for approval with the authorized officer for the district in which the public lands are located a Notice of Intent on a form approved by the Director.

(b) *Requirements.* The Notice of Intent will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities;

(2) a statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form;

(3) a brief description of the type of operations which will be undertaken;

(4) a description of the lands to be explored by township;

(5) a map or maps, available from state or Federal sources, showing the lands to be entered or disturbed by the proposed exploration operations; and

(6) the approximate dates of the commencement and termination of exploration operations.

§ 3209.1–2 Review of Notice of Intent.

The authorized officer will either approve or disapprove a Notice of Intent as promptly as practicable, but in any event within 30 calendar days after the date of the filing of the Notice of Intent. If the authorized officer shall disapprove a Notice of Intent, he shall explain in writing to the applicant the reasons for disapproval.

§ 3209.2 Exploration operations.

No exploration operations will be conducted on public lands except pursuant to the terms of a Notice of Intent which has been approved by the authorized officer.

§ 3209.3 Completion of operations.

Upon completion of the exploratory operations, there shall be filed with the authorized officer a "Notice of Completion of Exploration Operations." Within 90 days after the filing of such "Notice of Completion," the authorized officer shall notify the party who had conducted compliance with all of the terms and conditions set out by the regulations in this Subpart and in the Notice of Intent, or whether any additional measures must be taken to rectify any damage to the land, specifying the nature and extent thereof.

§ 3209.4 Bond requirement.

§ 3209.4–1 General.

(a) Simultaneously with the filing of the Notice of Intent, and before the entry is made on the land, the party or parties filing the Notice of Intent must file with the authorized officer a surety company bond for each exploration operation in the amount of not less than $5,000, conditioned upon the full and faithful compliance with all of the terms and conditions of the regulations in this Subpart and of that Notice of Intent.

(b) A party will be excused from compliance with the requirements of paragraph (a) of this section if he possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the State in which the lands on which he has filed the Notice of Intent are situated.

§ 3209.4–2 Riders to existing bond forms.

Holders of nationwide and statewide oil and gas exploration bonds shall be permitted, in lieu of furnishing additional bonds, to amend their bonds to include geothermal resources exploration operations.

§ 3209.4–3 Termination of period of liability.

The authorized officer will not give his consent to the cancellation of the bond if an individual bond was submitted or to the termination of the period of liability if a State or nationwide bond was submitted, unless and until there has been compliance with all of the terms and conditions of the Notice of Intent. Should the authorized officer fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, the period of liability under an individual bond or the period of liability for a particular exploration operation under a State or nationwide bond shall automatically terminate on the 91st day.

PART 3210—NONCOMPETITIVE LEASES

Subpart 3210—Noncompetitive Leases; General

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3210.1 Availability of land.
3210.2–1 Application.
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Subpart 3211—Bureau Motion, Lands Previously Leased for Geothermal Resources

3211.1 Releasing of formerly leased lands.
3211.2 Applications during simultaneous filing periods.
3211.3 Insurance of leases for unit on posted list.

Subpart 3210—Noncompetitive Leases; General

§ 3210.1 Availability of land.

(a) Applications to lease, except for those filed pursuant to Part 3230, of this chapter, filed prior to the effective date of these regulations are unacceptable and will be returned summarily without earning any priority.

(b) Lands and deposits subject to disposition under this part which are not within any KGRA will be available for leasing after the effective date of these regulations. Lands which are available for noncompetitive leasing and which were included in cancelled, relinquished, expired, or terminated leases shall be available for leasing only subject to the provisions of Subpart 3211 of this chapter. All other lands available for noncompetitive leasing will be available for leasing only subject to the provisions of this Subpart. All applications to lease the same lands which are filed between the effective date of these regulations and 30 days following that time will be considered to have been filed simultaneously, and the respective priority of the various applications will be determined by a public drawing. In other respects the first 30 days after the effective date of these regulations shall be treated as an application filing period as provided in § 3210.2–2.

§ 3210.2–1 Application.

An application for a lease must be filed on a form approved by the Director in the proper BLM office in duplicate for public lands and in triplicate where acquired lands are involved. The application must be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR 3210". An application will be considered filed when it is received in the proper office during business hours. The application must include the following:

(a) The applicant's name and address;

(b) a statement of applicant's citizenship and qualifications;

(c) a complete and accurate description of the lands applied for, which must include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed or protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted;

(d) a proposed plan which shall include: (1) A map, or maps, available from State or Federal sources, showing the topography of the land applied for, on which the applicant shall show drainage patterns, present road and trail locations, present utility systems, proposed road and trail location, proposed well locations and potential surface disturbance, and (2) a narrative statement setting forth his proposed plan and methods for diligent exploration. Such plan shall provide for a program of diligent exploration as defined in § 3203.5 of this chapter.

The narrative statement shall also describe the measures proposed to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution and hazards to public health and safety during lease activities. However, the proposed plan required by this paragraph need not be submitted with the application during the initial 30-day simultaneous filing period provided by § 3210.1(b) or during any application filing period pursuant to § 3210.2–2, but must be filed prior to the issuance of the lease, upon notice from the authorized officer; and

(e) a statement that the applicant does not hold, own, or control any interest, direct or indirect, in other Federal geothermal leases in the same State in excess of 20.480 acres.

§ 3210.2–2 Submission of applications.

Except for applications filed during the first 30 days after the effective date of these regulations, applications for leases pursuant to this subpart shall submitted only during application filing periods. An application filing period shall begin on the first working day of each calendar month and shall end at the close of business on the last working day of that month. The first application filing period shall begin on the first working day of the month following the conclusion of the initial 30 day filing period provided in § 3210.1(b). No applicant shall file during the same application filing period a second application which overlaps any of the land covered by his first application. When an application is filed with the authorized officer, the date of filing shall be stamped on the envelope. The envelope containing the application shall remain sealed until the end of the application filing period during which the application is filed. On the first working day following the end of the application filing period all applications shall be opened, and it will be determined which applications are for lands included in a KGRA. In determining whether land included in an application is a KGRA because of competitive interest, no application submitted during any subsequent application filing period will be considered. Applications for land determined to be KGRA

will be rejected. All other applications will be assigned priority according to the date of filing. If any application covers both land within a KGRA and land outside a KGRA, the applicant will be granted the opportunity to amend his application to exclude the portion included in a KGRA, and his amended application will be assigned priority according to the date of filing of his original application, but must comply with all other requirements of these regulations.

§ 3210.2–3 Withdrawal of application

An application may not be withdrawn, either in whole or in part, unless the request is received by the proper BLM office before the lease or an amendment of the lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States even though the effective date of the lease is subsequent to the date of filing of the withdrawal, except where a separate conflicting lease has been signed on behalf of the United States covering the land described in the withdrawal.

§ 3210.2–4 Amendment to lease.

If any of the land applied for was open to filing when the application was filed but is omitted from the lease for any reason and thereafter becomes available for noncompetitive leasing, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the lessee's application with respect to such land or such omitted lands have been determined to be within a KGRA. The lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued.

§ 3210.3 Determination of priorities.

(a) No lease shall be issued before final action has been taken on (1) any prior application to lease the land, (2) any subsequent application to lease the land that is based upon a claimed preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land.

(b) Where a lease is issued before final action has been taken on such applications and petitions, it shall be canceled, and the advance rental returned, after due notice to the lessee, where the applicant or petitioner is found to be qualified and entitled to receive a lease of the land.

(c) Applications for lease received in the mail or delivered on the same day will be deemed to have been simultaneously filed, and the right of priority and the order of processing will be determined by a public drawing.

(d) Prior to the issuance of any lease, a determination shall be made as to whether or not the lands are within a KGRA. Applications for lands determined to be within any KGRA will be rejected.

§ 3210.4 Rejections.

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. The authorized officer retains discretion to reject an application for a noncompetitive lease even though the tract for which application is made is not determined to be within a KGRA.

Subpart 3211—Bureau Motion—Land Previously Leased for Geothermal Resources

§ 3211.1 Releasing of formerly leased lands.

Lands available for noncompetitive leasing in canceled or relinquished leases or in leases which expire by operation of law at the end of their primary or extended terms or in leases which terminate by operation of law for nonpayment of rental pursuant to 30 U.S.C. sec. 1004, shall be subject to further leasing only in accordance with the provisions of this section. From time to time the authorized officer will publish in the FEDERAL REGISTER, post in each proper BLM office, and provide appropriate news coverage of:

(a) A list of leasing units composed of lands which are available for noncompetitive leasing and which were in canceled, expired, relinquished, or terminated leases.

(b) An announcement that applications for leases on such lands will be received after a specific hour and date and that any applications filed during a specified simultaneous filing period beginning at that time will be regarded as simultaneously filed;

(c) The address of the proper BLM office where applications must be filed and where the terms and conditions under which the lease will be issued are available; and

(d) Requirements for a complete application, indicating that the proposed plan of operation, as required by § 3210.-2–1(d) of this chapter, will not be required until there has been a drawing and a consequent determination of priority, but must be filed prior to the issuance of the lease, upon notice from the authorized officer.

§ 3211.2 Applications during simultaneous filing periods.

(a) An application shall conform to the requirements of § 3210.2–1 of this chapter, except as provided below.

(b) Only one complete leasing unit, identified by unit number, may be included in an application. Lands not on the published list may not be included in the application.

(c) An applicant is permitted to file only one application for each numbered unit on the posted list. Submission of more than one application by or on behalf of the applicant for any unit on the posted list will result in the disqualification of all applications submitted by that applicant for the drawing to be held for that particular unit.

(d) The application must be accompanied by a signed statement that the applicant will furnish the information required by these regulations within 15 days after notification that his application is the only one for the tract, or that he is the successful drawee.

(e) Each application filed during a simultaneous filing period must be submitted in a sealed envelope marked "Application for a lease pursuant to 43 CFR subpart 3211". The envelope will remain sealed until the end of the 30-day simultaneous filing period, at which time the application will be time-stamped simultaneously and serialized. A public drawing of all applications received during the simultaneous 30-day period will be held to determine respective priorities and order of processing.

(f) Applications filed during a simultaneous filing period are subject to the classification criteria established in § 3200.0–5(k) of this chapter, and will be considered as all filed the same day.

(g) The requirements of § 3210.2–1(d) of this chapter requiring a proposed plan of operation need not be satisfied for a complete application during the 30-day simultaneous filing period or during any future designated simultaneous filing period. Such plan must be filed by the successful drawee prior to the issuance of the lease, upon notice from the authorized officer.

(h) Each application must be accompanied by the service charge of $50. The first year's advance rental need not be submitted with the application. A lease may be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper BLM office within fifteen days from the date of receipt of notice that such rental is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the application of the drawee having the next highest priority in the drawing.

§ 3211.3 Issuance of leases for units on posted list.

(a) If more than one application is received during the simultaneous filing period for the same unit on the list posted pursuant to § 3211.1(a), all applications on that unit filed during that period will be considered simultaneously filed. Priority of filing for such units will be determined by a public drawing. Three applications will be drawn for each unit, and the order in which they are drawn will fix the order in which the successful drawee will be determined. Where less than three applications have been filed, all applications will be drawn to determine priority.

If the lands are determined not to be within any KGRA, a lease may be issued to the successful drawee upon his compliance with all applicable regulations, including those in Subpart 3210 of this chapter.

(b) If only one application is filed during the simultaneous filing period on a unit on the list posted pursuant to § 3211.1(a), a lease on that unit, if the land is not included within any KGRA, may be issued to the applicant, upon his compliance with all applicable regulations, including those in Subpart 3210 of this chapter.

(c) If no application is filed on a unit on the list posted pursuant to § 3211.1 (a) within the prescribed simultaneous filing period, the land in that unit, if not within a KGRA, will become available for leasing in accordance with Subpart 3210 of this chapter.

PART 3220—COMPETITIVE LEASES

Subpart 3220—Competitive Leases; General

Sec.
3220.1 General.
3220.2 Nominations.
3220.3 Publication of notice of lease sale.
3220.4 Contents of notice of lease sale.
3220.5 Bidding requirements.
3220.6 Award of lease.

Subpart 3220—Competitive Leases; General

§ 3220.1 General.

(a) Lands within a KGRA, except as provided under § 3201.1 of this chapter, will be available for leasing on the effective date of these regulations.

(b) The authorized officer will accept nominations to lease, or may on his own motion from time to time call for nominations to lease. Nominations may be withdrawn at any time.

§ 3220.2 Nominations.

(a) Nominations will be submitted on a card approved by the Director.

(b) A nomination must be filed in the proper BLM office in duplicate for public lands and triplicate where acquired lands are involved and must include the following:

(1) The nominator's name and address;

(2) A statement of citizenship and qualifications for lease;

(3) A description of the lands; and

(4) A statement of the interests, direct or indirect, held in other Federal geothermal leases in the same State.

§ 3220.3 Publication of notice of lease sale.

Where the Secretary determines to offer lands for competitive leasing he will publish a notice of lease sale in a newspaper of general circulation in the area in which the lands to be leased are located once a week for 4 consecutive weeks, or for such other period as he may direct.

§ 3220.4 Contents of notice of lease sale.

The notice will specify the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale, including royalty and rental rates.

The notice will indicate the proper BLM office where the terms and conditions under which the lease will be issued are available. The notice will also indicate that the proposed plan of operation, as required by § 3210.2–1(d) of this chapter, must be filed before a lease can be issued.

§ 3220.5 Bidding requirements.

(a) A separate identified sealed bid must be submitted for each lease unit. Each bidder must submit with his bid a certified or cashier's check, bank draft, money order or cash in the amount of one-half of the amount bid together with proof of qualifications as required by these regulations.

(b) All bidders are warned against violation of the provisions of Title 18 U.S.C. section 1860 prohibiting unlawful combination or intimidation of bidders.

§ 3220.6 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) Leases will be awarded to the highest responsible qualified bidder, except as required under Part 3230 of this chapter.

(c) The right to reject any and all bids is reserved. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened (or such longer period as may be needed to comply with § 3230.1–6 of this chapter), all bids for that lease will be considered rejected. Deposits on rejected bids will be returned.

(d) If the lease is awarded, three copies of the lease will be sent to the successful bidder who shall be required to execute them within 30 days from receipt thereof, to pay the first year's rental, the balance of the bonus bid, file the required bond or bonds, and submit the proposed plan of operation as required by § 3210.-2–1(d) of this chapter. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(e) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event the lands will be reoffered when it is determined, in the opinion of the Secretary, that sufficient interest exists to justify a competitive lease sale.

PART 3230—RIGHTS TO CONVERSION TO GEOTHERMAL LEASES OR APPLICATION FOR GEOTHERMAL LEASES

Subpart 3230—Rights to Conversion to Geothermal Leases or Application for Geothermal Leases; General

Sec.
3230.1 General.
3230.1–1 Rights to conversion to geothermal leases.
3230.1–2 Rights to conversion to applications for geothermal leases.
3230.1–3 Land in which minerals are reserved to the United States.
3230.1–4 Conflicting claims of rights to conversion to geothermal leases, or to applications for geothermal leases.
3230.1–5 Evidence required to qualify for grant of rights to conversion to geothermal leases, or to applications for geothermal leases.
3230.1–6 Method of leasing to owners of conversion rights to geothermal leases, or to applications for geothermal leases.
3230.1–7 Acreage limitation.
3230.2 Qualifications.
3230.3 Applications.
3230.3–1 Filing of application.
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3230.4 Conversion to geothermal leases or to applications for geothermal leases.
3230.4–1 Processing and adjudicating applications.

Subpart 3230—Rights to Conversion to Geothermal Leases or Application for Geothermal Leases

§ 3230.1 General.

§ 3230.1–1 Rights to conversion to geothermal leases.

Where lands were on September 7, 1965, subject to valid leases or permits issued under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181–287), or the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–358), or subject to existing mining claims located on or prior to September 7, 1965, the lessees, permittees, or claimants, or their successors in interest, if qualified to hold geothermal leases, shall have the right, subject to certain limitations as hereinafter provided, to convert such leases, permits or claims to geothermal leases covering the same lands. Upon issuance of a geothermal lease based upon the exercise of conversion rights hereunder, such outstanding leases, permits, or mining claims shall be deemed to be terminated or relinquished, respectively.

§ 3230.1–2 Rights to conversion to applications for geothermal leases.

Where lands were subject to application for leases or permits under the mineral leasing laws referred to in § 3230.1–1 on September 7, 1965, the applicants may, subject to certain limitations as hereinafter provided, convert their applications to applications for geothermal leases having priorities dating from the time of filing such applications under said mineral leasing laws. Upon issuance of a geothermal lease based upon the exercise of conversion rights hereunder, such pending applications for leases or permits shall be deemed to be withdrawn.

§ 3230.1–3 Land in which minerals are reserved to the United States.

Where a right to one of the forms of conversion referred to in § 3230.1–1 or § 3230.1–2 is claimed as to lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States, final action on any claim to conversion rights under section 4 of the Act shall be held in abeyance until such time as the question of title to the geothermal resources in such lands has been resolved pursuant to the provisions of section 21(b) of the Act, unless the Secretary determines that it is in the public interest to make a determination of such claims at an earlier time, subject to the rights, if any, of surface owners.

§ 3230.1–4 Conflicting claims of rights to conversion to geothermal leases, or to applications for geothermal leases.

(a) Where there are conflicting claims of rights to conversion to geothermal leases based upon mineral leases, mineral permits, or mining claims embracing the same land, the date of issuance of the permit or lease or of recordation of the claim shall determine priority.

(b) Where there are rights to conversion to applications for geothermal

leases based on applications for mineral leases or permits in conflict with rights to conversion to geothermal leases based upon mining claims embracing the same lands, the mining claim right to convert to a geothermal lease shall have priority. If the applicant for a geothermal lease based upon a mining claim fails to qualify for any reason, the application for an application for a geothermal lease is entitled to priority based on the date of filing the application for a mineral lease or permit.

§ 3230.1–5 Evidence required to qualify for grant of rights to conversion to geothermal leases, or to applications for geothermal leases.

(a) Any person claiming rights to conversion to a geothermal lease must show to the reasonable satisfaction of the authorized officer that substantial expenditures for the exploration, development or production of geothermal steam, but not associated geothermal resources, were made by the applicant who is seeking the conversion on the lands for which a lease is sought or on adjoining, adjacent or nearby lands, including both Federal and non-Federal lands. The substantial expenditures must have been made prior to December 24, 1970, and either by the applicant seeking conversion or by his predecessors in interest.

(b) For purposes of these regulations, an application for a lease or a permit, filed pursuant to applicable mineral leasing acts, pending on September 7, 1965, which subsequently ripened into a lease or permit, and which remains outstanding or has either terminated, expired or been canceled or relinquished, retains the right to conversion to an application for a geothermal lease. Applications for a lease or permit, filed pursuant to applicable mineral leasing acts, pending on September 7, 1965, which were subsequently withdrawn, retain the right to conversion to an application for a geothermal lease. Leases or permits issued pursuant to the applicable mineral leasing acts and outstanding on September 7, 1965, which were subsequently terminated, expired, or were canceled or relinquished, retain the right to conversion to a geothermal lease.

§ 3230.1–6 Method of leasing to owners of conversion rights to geothermal leases, or to applications for geothermal leases.

(a) *Lands included within any KGRA*—(1) *Competitive lease.* Where lands have been included within any KGRA prior to the issuance of a lease, the owner of a conversion right to a geothermal lease for such lands shall be entitled to the issuance of a competitive lease only in accordance with the provisions of subparagraph (2) of this paragraph. If the lands subject to a conversion right to a geothermal lease are in part within a KGRA and in part outside a KGRA, the holder of that conversion right shall have the right to divide his conversion right into two separate conversion rights so that he may receive a geothermal lease to the lands within the KGRA only subject to subparagraph (2) of this paragraph and a geothermal lease to the lands not within a KGRA subject to paragraph (b) of this section.

(2) *Preference right.* (i) Lands which have been included within any KGRA shall be leased only by competitive bidding in the manner prescribed in Subpart 3220 of this chapter, except that, in addition, the name and address of the applicant for any conversion right to a geothermal lease will be set forth in the lease sale notice.

(ii) The person owning the right to conversion to a geothermal lease shall be informed by written notice of the highest bona fide bid submitted for the lease at the sale. If within thirty (30) days after he has received that written notice, the person owning the right to conversion to a geothermal lease shall inform the authorized officer that he wishes such a lease, pay an amount equal to the highest bona fide bid submitted, pay the rental for the first year, file the required bond or bonds, and submit the data required by § 3210.2–1(d) and (e) of this chapter, a lease will be issued to him.

(iii) Failure of the owner of the right to conversion to a geothermal lease to inform the authorized officer timely will constitute a forfeiture of his conversion rights without further notice to him. In this event, the lease will be offered to the highest bona fide bidder, if otherwise qualified.

(iv) Where no bids are received, the person owning the right to conversion to a geothermal lease will not be awarded the lease. Failure of the owner of the right to conversion to submit a bona fide bid or to meet the high bid for the tract offered at the sale will constitute a forfeiture of his conversion right without further notice.

(b) *Lands not included within any KGRA—Noncompetitive lease.* Where lands have not been included within any KGRA prior to the issuance of a lease, the owner of a conversion right to a geothermal lease for such lands, if otherwise qualified, shall be entitled to the issuance of a noncompetitive lease for such lands.

(c) *Lands included within a KGRA*—(1) *Application for a lease.* Where lands have been included within a KGRA prior to the isusance of a lease, the owner of a conversion right to an application for a geothermal lease to those lands shall be entitled to receive a competitive geothermal lease only in accordance with the provisions of Subpart 3220 of this chapter. If the lands subject to a conversion right to a geothermal application are in part within a KGRA and in part outside a KGRA, the holder of that conversion right may amend his application to cover only the land outside the KGRA.

(2) *Preference right.* The owner of a conversion right to an application for a geothermal lease where the lands have been included within a KGRA shall receive no preference right to meet the highest bona fide bid.

(d) *Lands not included within any KGRA*—(1) *Application for a lease.* Where lands have not been included within a KGRA, the owner of a conversion right to an application for a geothermal lease, if otherwise qualified, shall be entitled to convert his right into an application for a non-competitive lease.

(2) *Preference right.* The owner of a conversion right to an application for a geothermal lease where the lands have not been included within a KGRA, if otherwise qualified, shall be entitled to the issuance of a non-competitive geothermal lease for such lands in accordance with Subpart 3210 of this chapter.

§ 3230.1–7 Acreage limitation.

No person shall be permitted to obtain, through conversion of mineral leases or prospecting permits, or applications therefor, or mining claims, leases for more than 10,240 acres, or a lease to any land not included in the lease, permit, application or claim converted, except that any such geothermal lease issued may include some lands not embraced in the lease, permit, application or claim on which the conversion right is based, where a metes and bounds description was used to describe lands in issued leases or permits or in filed applications or mining claim locations. In such event, the metes and bounds description will be conformed by the authorized office to a legal subdivision, to the extent possible.

§ 3230.2 Qualifications.

Persons who believe they are qualified under the Act to convert mineral leases or permits or existing mining claims to geothermal leases and persons who believe they are entitled to convert applications for mineral leases and permits to applications for geothermal leases shall comply with the procedures set forth below.

§ 3230.3 Applications.

§ 3230.3–1 Filing of application.

(a) A person seeking to convert a lease, permit, or application therefor, or a mining claim to a geothermal lease or application must have filed a written application on or before June 22, 1971. If such an application has been filed and does not contain the information specified in § 3230.3–2, such information must be supplied by the applicant within 60 days of the effective date of these regulations.

(b) Failure to have filed a conversion right application on or before June 22, 1971, will result in the loss of any such rights so claimed.

§ 3230.3–2 Statements required.

(a) An application based on a valid lease or permit referred to in section 3230.1–1 hereof shall include the date of issuance, the State in which the lands are located, and the serial number of the lease or permit. An application based on a mining claim referred to in § 3230.1–1 shall include the name, location, legal description or reference sufficient to identify the lands on the ground, date of location and date and place of recordation of the mining claim (including volume and page), which the applicant seeks to convert to a geothermal lease. An application based on an application for a mineral lease or permit referred to in § 3230.1–1 shall include the date the application for the lease or permit was filed with the Bureau of Land Management and the location of the proper BLM office where the application was filed, and should indicate the serial number assigned to the application.

(b) An application shall include a description of the lands sought to be included in a geothermal lease. If the lands have been surveyed under the public land rectangular survey system, each application shall describe the lands by legal subdivision, section, township, and range. If otherwise officially surveyed, the lands shall be described by the legal description, mining claim survey, or irregular tracts. If the lands have not been so surveyed, but protracted surveys for those lands have been approved and the effective date thereof published in the FEDERAL REGISTER, each application for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys. If the lands have not been so surveyed, or included within approved protracted surveys, or it is otherwise appropriate, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to a monument or to a prominent topographic feature.

(c) An application shall be accompanied by a detailed statement showing: (1) The expenditure made for the exploration, development, or production of geothermal steam, but not associated geothermal resources, on lands for which a geothermal lease is sought or on adjoining, adjacent or nearby Federal or non-Federal lands and the date or dates such expenditures were made, (2) the names and current addresses of the persons who actually performed the aforesaid exploration, development, or production work, (3) the geological, geophysical, and engineering data acquired in such exploration, development, or production which demonstrates, or tends to demonstrate the expenditures claimed, (4) a map showing the location where the expenditures and improvements were made, (5) a proposed plan as required by § 3210.2–1(e) of this chapter, and (6) a statement that he will be bound by the terms and conditions of a lease, if issued. The applicant shall file such additional information with respect to the application as requested by the authorized officer.

§ 3230.4 Conversion to geothermal leases or to applications for geothermal leases.

§ 3230.4–1 Processing and adjudicating applications.

Application for conversion to geothermal leases or to applications for geothermal leases together with all information and data submitted or requested by the authorized officer pursuant to § 3230.3–2 and any other pertinent available information or data shall be reviewed by the authorized officer to determine whether the required showing has been made, and thereafter the authorized officer shall prepare a proposed determination which shall be submitted to the Secretary, who will make a determination that the applicant has or has not satisfactorily shown that he is entitled to receive the grant of a geothermal lease, or application for a geothermal lease.

PART 3240—RULES GOVERNING LEASES

Subpart 3240—Rules Governing Leases

Subpart 3241—Assignments and Transfers

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Subpart 3241—Assignments and Transfers

§ 3241.1 Assignments, transfers, interests, qualifications.

§ 3241.1–1 Record title assignments or transfers of leases or undivided lease interests.

(a) The record title of leases may be assigned as to all or part of the leased acreage, except that no assignment will be approved where (1) either the assigned or retained portions created by the assignment would be less than 640 acres, unless the total acreage in the lease being partially assigned includes an irregular subdivision, as provided in § 3203.2 of this chapter in which case the assigned and retained portions may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, or (2) an undivided interest is created by assignment of a lease containing less than 640 acres, or (3) where the lease being assigned contains 640 acres or more, an undivided interest of less than 10 percent would be created in the leased acreage. An exception to the minimum acreage provision of this section may be made by the Secretary where he finds such exception is necessary in the interest of conservation of the resources.

(b) A working interest or operating right may be assigned, in accordance with this section, *Provided* That the assigned interest or right, divided or undivided, vests in the holder only the right to explore, develop and produce geothermal resources from the leased lands to the extent of not less than the interest assigned.

(c) All requests for approval of any assignment will be reviewed, prior to approval, to adjust environmental terms and conditions where necessary.

§ 3241.1–2 Qualifications.

(a) No assignment will be approved (1) if the assignee or any other party in interest is not qualified to take and hold a lease; (2) if a required bond is not filed; or (3) if the statement of interest required under § 3202.2–1(a) of this chapter is not filed.

(b) An assignment to a minor other than an heir or devisee of a lessee will not be approved.

(c) The assignment must be accompanied by a signed statement by the assignee either (1) that he is the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties holding interests in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the parties setting forth the nature and extent of the interest of each party and the nature of the agreement between them.

(d) Where an attorney-in-fact or agent signs, on behalf of the assignor or assignee, the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished to the authorized officer.

(e) For the heir or devisee of the deceased holder of a lease, an operating agreement, or an overriding royalty interest in a producing lease, to be recognized by the authorized officer as the holder of that lease, agreement or interest, the appropriate showing required under the regulations in § 3202.2–6 of this chapter must be furnished to the authorized officer.

§ 3241.2 Requirements for filing of assignments or transfers.

§ 3241.2–1 Place of filing and service charge.

A request for approval of any assignment or other instrument of transfer of a lease or interest therein must be filed in the proper BLM office and accompanied by a nonrefundable service charge of $50. An application request not accompanied by payment of such a service charge will not be accepted for filing.

§ 3241.2–2 Number of copies required.

Three copies of all instruments of assignment or transfer, and a single copy of any additional information required by § 3202.2 of this Chapter relating to citizenship or qualification of corporations and associations, including partnerships, must be filed in the proper BLM office.

§ 3241.2–3 Time of filing assignments, transfers of leases, or undivided lease interests.

(a) Any assignment or instrument of transfer of a lease or of an interest therein, including an assignment of working interests, operating agreements, and operating rights, must be filed in the proper BLM office for approval within 90 days from the date of execution of that instrument and must contain all of the terms and conditions agreed upon by the parties thereto, together with evidence and statements similar to that required of an applicant under these regulations in this group.

(b) A separate instrument of assignment must be filed in the proper BLM office for each geothermal lease involving transfers of record title. When transfers to the same person, association, including partnerships, or corporation involve more than one geothermal lease, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3241.2–4 Forms and statements.

A form approved by the Director, or unofficial copies of that form in current use, must be used for transfers and requests for approval referred to in this section and must be filed in duplicate for public lands and in triplicate where acquired lands are involved. The approved form may be used for an assignment which affects a transfer of the record title to all or part of a geothermal lease, but it is not to be used for any other type of transfer. The application for assignment shall be deemed to be approved upon execution by the authorized officer.

§ 3241.2–5 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease.

§ 3241.3 Bonds.

Where an assignment does not create separate leases, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record as to the lease retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nationwide or statewide bond, no additional showing by such party is necessary as to the bond requirement.

§ 3241.4 Approval.

Upon approval, an assignment shall be effective as of the first day of the lease month following the date of filing of the assignment.

§ 3241.5 Continuing responsibility.

(a) The assignor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment is approved.

(b) Upon approval, the assignee and his surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the assignment to the contrary.

§ 3241.6 Production payments.

If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items.

§ 3241.7 Overriding royalty interests.

§ 3241.7–1 General.

(a) Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations.

(b) If an overriding royalty interest is created which is not shown in the instrument of assignment or transfer, a statement must be filed in the proper BLM office describing the interest.

(c) Any such assignment will be deemed valid if accompanied by a statement over the assignee's signature that the assignee is a citizen of the United States, an association of such citizens, or a corporation organized under the laws of the United States or of one of the States or the District of Columbia, and that his interests in geothermal leases do not exceed the acreage limitations provided in these regulations.

(d) All assignments of overriding royalty interests must be filed for record in the proper BLM office within 90 days from the date of execution. Such interests will not receive formal approval.

§ 3241.7–2 Limitation of overriding royalties.

(a) Except as herein provided, an overriding royalty on the value of the output of all geothermal resources, or any of them, at the point of shipment to market may be created by assignment or otherwise: *Provided,* That, (1) the overriding royalty is not for less than one-fourth (¼) of 1 percent of the value of such output, and does not exceed 50 percent of the rate of royalty due to the United States as specified in the geothermal lease, or as reduced pursuant to such lease, and (2) the overriding royalty, when added to overriding royalties previously created, does not exceed the maximum rate established herein.

(b) The creation of an overriding royalty interest that does not conform to the requirements of paragraph (a) of this section shall be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides (1) for a prorated reduction of all overriding royalties so that the aggregate rate of royalties does not exceed the maximum rate established in paragraph (a) of this section and (2) for the suspension of an overriding royalty during any period when the royalties due to the United States have been suspended pursuant to the terms of the geothermal lease.

§ 3241.8 Lease account status; requirements.

Unless the lease account is in good financial standing as to the area covered by an assignment at the time the assignment and bond are filed, or is placed in good standing before the assignment is reached for action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these regulations.

§ 3241.9 Effect of assignment.

An assignment of the record title of the complete interest in a portion of the lands in a lease shall segregate the assigned and retained portions into separate and distinct leases. An assignment of an undivided interest in the entire leasehold shall not segregate the lease into separate or distinct leases.

Subpart 3242—Production and Use of Byproducts

§ 3242.1 General.

Where the Supervisor determines that production, use, or conversion of geothermal steam under a geothermal lease is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water contained in or derived from such geothermal steam for beneficial use in accordance with applicable State water laws, the authorized officer shall require substantial beneficial production or use thereof, except where he determines that:

(a) Beneficial production or use is not in the interest of conservation of natural resources;

(b) beneficial production or use would not be economically feasible; or

(c) beneficial production and use should not be required for other reasons satisfactory to him.

§ 3242.2 Production and use of commercially demineralized water as a byproduct, production, and use of other sources of water.

§ 3242.2–1 General.

Except as provided in these regulations, or the lease, the lessee shall have the right to process fluids, including brine, condensate, and other fluids, which are associated with geothermal steam within lands subject to the geothermal lease for the purpose of developing, producing, and utilizing the commercially demineralized water recovered as a result of such processing.

§ 3242.2–2 Prohibition on production of commercially demineralized water.

The lessee shall not be authorized to engage in the primary production of commercially demineralized water from the produced fluids contained in or derived from geothermal steam referred to in § 3242.2–1, where such use would result in the undue waste of geothermal energy.

§ 3242.2–3 Water wells on geothermal areas.

All leases issued under these regulations shall be subject to the condition that, where the lessee finds only potable water in any well drilled for production of geothermal resources, the Secretary

may, when the water is of such quality and quantity as to be valuable and useable for agricultural, domestic, or other purpose, acquire the well with casing installed in the well at the fair market value of the casing.

§ 3242.2–4 State water laws.

Nothing in these regulations shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

Subpart 3243—Cooperative Conservation Provisions

§ 3243.1 Cooperative or unit plans.

To conserve the natural resources of any geothermal pool, field or like area more properly, lessees and their representatives may unite with each other or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation or any geothermal resource area, or any part thereof (whether or not any part of that geothermal resource area is then subject to any cooperative or unit plan of development or operation). Applications to unitize shall be filed with the Supervisor who shall certify whether such plan is necessary or advisable in the public interest. The procedure in obtaining approval of a cooperative or unit plan of development, the provisions for the supervision of the cooperative or unit plan, and a suggested text of an agreement, are contained in 30 CFR Part 271.

§ 3243.2 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the Supervisor shall be excepted in determining holdings or control for purposes of acreage chargeability. For the extension of leases committed to a unit plan, see Subpart 3203 of this part.

§ 3243.3 Communitization or drilling agreements.

§ 3243.3–1 Approval.

(a) The Supervisor is authorized, when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve, or to require lessees to enter into, communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the Supervisor.

(c) Executed agreements shall be submitted to the Supervisor in sufficient number to permit retention of five copies after approval.

§ 3243.3–2 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, disclose the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all interested necessary parties and will be effective only after approval by the Supervisor.

§ 3243.4 Operating, drilling, development contracts or a combination for joint operations.

§ 3243.4–1 Approval.

(a) The Secretary may on such conditions as he may prescribe, approve operating, drilling, or development contracts made by one or more geothermal lessees, with one or more persons, associations, including partnerships, or corporations whenever he shall determine that such contracts are required for the conservation of natural resources or in the best interest of the United States.

(b) Contracts submitted for approval under this section should be filed with the Supervisor together with enough copies to permit retention of five copies after approval.

(c) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transmission, transportation, or utilization of geothermal resources, and to finance the same.

§ 3243.4–2 Requirements.

(a) The contract must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished so the Secretary may have facts upon which to make a definite determination in accordance herewith and to prescribe the conditions on which approval of the contracts shall be made.

(b) The application must show a reasonable need for the contract and that it will not result in any concentration of control over the production or sale of geothermal resources which would be inconsistent with the antimonopoly provisions of law.

§ 3243.4–3 Acreage chargeability.

All leases operated under approved operating, drilling or development contracts shall be excepted in determining holdings or control for purposes of acreage chargeability.

Subpart 3244—Terminations and Expirations

§ 3244.1 Relinquishments.

(a) A lease, or any legal subdivision of the area covered by such lease, may be relinquished by the record title holder by filing a written relinquishment in triplicate in the proper BLM office, provided the partial relinquishment does not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision in which case the remaining leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, and except that the minimum acreage provision of this section may be waived by the Secretary where he finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: (1) Describe the lands to be relinquished as described in the lease; (2) include a statement as to whether the relinquished lands had been disturbed and if so whether they were restored as prescribed by the terms of the lease; (3) state whether wells had been drilled on the lands and if so whether they had been placed in condition for abandonment; and (4) furnish a statement that all moneys due and payable to workmen employed on the leased premises have been paid.

(b) A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety: (1) To make payments of all accrued rentals and royalties; (2) to place all wells on the land to be relinquished in condition for suspension of operations or abandonment; (3) to restore the surface resources in accordance with all regulations and the terms of the lease; and (4) to comply with all other environmental stipulations provided for by such regulations or lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3244.2 Automatic terminations and reinstatements.

§ 3244.2–1 General.

Except as provided in § 3244.2–2 any lease will automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper BLM office. Upon such notation the lands included in such lease will become subject to leasing as provided for in Subpart 3211 of this chapter.

§ 3244.2–2 Exceptions.

(a) *Nominal deficiency.* If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in a Notice of Deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than $10 or one percentum (1%) of the total payment due, whichever is more. The authorized officer shall send a Notice of Deficiency to the lessee on an approved form. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt to submit the

full balance due to the proper BLM office. If the payment called for in the notice is not made within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(b) *Reinstatements.* (1) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated automatically for failure to pay the full amount of rental due on or before the anniversary date, if it is shown to his satisfaction that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee; and a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the proper BLM office.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a lease be reinstated if (i) a valid lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by the terminated lease, or (ii) the interest in the lands has been withdrawn, disposed of, or has otherwise become unavailable for leasing. However, the authorized officer will not issue a new lease for lands covered by a lease which terminated automatically until 90 days after the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary. The basic criterion in accordance with which this discretion will be exercised is whether the Secretary would be willing to issue a lease if a new lease offer for the same land were under consideration.

§ 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.

A lease may be canceled by the authorized officer for any violation of these regulations, the regulations in 30 CFR Part 270, or the lease terms, 30 days after receipt by the lessee of notice from the authorized officer of the violation, unless (a) the violation has been corrected, or (b) the violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. A lessee shall be entitled to a hearing on the matter of any such claimed violation or proposed cancelation of lease if a request for a hearing is made to the authorized officer within the 30-day period after notice. The procedures with respect to notice of such hearing and the conduct thereof, and with respect to appeals from decisions of Administrative Law Judges upon such hearings, shall follow insofar as practicable the procedural rules applicable to hearings and appeals in public lands cases within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, contained in Department Hearings and Appeals Procedures, Part 4 of this title. The period for correction of violation or commencement to correct a violation of regulations or of lease terms, as aforesaid, shall be extended to 30 days after the lessee's receipt of the Administrative Law Judge's decision upon such a hearing if the Administrative Law Judge shall find that a violation exists.

§ 3244.4 Expiration by operation of law.

Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, there is no production in commercial quantities, or a producing well, or actual drilling operations being diligently prosecuted, will expire at the end of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands previously covered by that expired lease will be subject to the filing of new applications for leases only as provided in these regulations.

§ 3244.5 Removal of materials and supplies upon termination of lease.

Upon the expiration of the lease, or the earlier termination thereof pursuant to this subpart, the lessee shall have the privilege at any time within a period of ninety (90) days thereafter of removing from the premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures, and equipment subject to removal, but not removed within the 90-day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, shall, at the option of the Supervisor, become property of the lessor, but the lessee shall remove any or all such property where so directed by the lessor.

NOTE: Forms 3200–4 and 3200–1 filed as part of the original document. Copies of these forms may be obtained by writing Geothermal Coordinator, Department of the Interior, Washington, D.C. 20240.

Dated: December 17, 1973.

W. W. LYONS,
Deputy Under Secretary of the Interior.

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GPO 851-608

Circular No. 2357

REGULATIONS PERTAINING TO:

OIL AND GAS LEASING

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of January 8, 1974

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Subpart 3100—Oil and Gas Leasing

§ 3100.0–3 Authority.

(a) *Public domain.* (1) The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.).

(2) Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

(b) *Acquired lands.* The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359). The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV) except as to leases or permits outstanding on August 7, 1947.

(c) *Withdrawn, reserved and segregated lands*—(1) *Protective leasing.* Issuance of protective leases authorized under sec. 441, Revised Statutes; 5 U.S.C. 485; see also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41).

(d) *Special Acts*—(1) *Rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

(2) *Nevada.* The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(3) *Lands patented to State of California.* The act of March 3, 1933 (47 Stat. 1487) as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026).

(4) *National Forest Lands in Minnesota.* The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(5) *Lake Mead Recreation Area.* The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(6) *National Forest Wilderness.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(7) *Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3100.0–5 Definitions.

(a) *Known geologic structure.* A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

(b) *Sole party in interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

(c) *Regional oil and gas supervisor.* The Regional Oil and Gas Supervisor of the Geological Survey for the region in which lands under lease are situated.

(d) *Rule of approximation.* Where an application embraces an acreage in excess of the acreage limitation, it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3100.0–7 Cross-reference.

43 CFR 16.

§ 3100.0–9 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3100.1 Helium.

§ 3100.1–1 Ownership and rights.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium. (See 43 CFR Part 16.)

§ 3100.2 Minerals subject to leasing.

§ 3100.2–1 Oil and gas.

§ 3100.3 Drainage.

§ 3100.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3100.3–2 Drilling or payment of compensatory royalty.

Where land in any lease is being drained of its oil or gas content by a

well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

§ 3100.3–3 Protective leasing.

Where jurisdiction over disposition of mineral deposits in land set apart for other Government agencies has been transferred to the Department of the Interior because of drainage of its oil or gas content, such land must be offered for lease by competitive bidding. Protective leases may cover public domain lands which have been withdrawn from oil or gas leasing or acquired lands not subject to leasing under the Acquired Lands Leasing Act.

§ 3100.4 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3100.5 Options.

§ 3100.5–1 Enforceability.

(a) *Approval of Secretary required.* No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than 3 years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary.

(b) *Notice required.* No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the appropriate land office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (i) the names and addresses of the parties thereto; (ii) the serial number of the lease or application for lease to which the option is applicable; (iii) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (iv) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

§ 3100.5–2 Chargeable acreage.

(a) *How charged.* The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the appropriate land office.

(b) *When charged.* Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

§ 3100.5–3 Period of option.

An option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and 3 years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

§ 3100.5–4 Acreage in cooperative or unit plan.

It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 3105.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

§ 3100.5–5 Option statements.

Each holder of an option must file in the appropriate land office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (1) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (2) date and expiration date of each option; (3) number of acres covered by each option; (4) aggregate number of options held in each State, and total acreage thereof; and (5) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under § 3100.5–1(b) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the land office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 3100.6 Leases within unit areas.

§ 3100.6–1 Joinder evidence required.

Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

§ 3100.6–2 Separate leases to issue.

In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 3100.7 Boundaries of known geologic structures.

§ 3100.7–1 Determination by Geological Survey.

The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields, and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946.

§ 3100.7–2 Notice of determination.

Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the appropriate land office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have been made. Because determinations of

"structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the appropriate land office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey, Washington, D.C. 20240.

§ 3100.7–3 Date of determinative of rights.

In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A–26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

§ 3100.7–4 Request for determination.

Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

Subpart 3101—Lands Subject to Leasing

§ 3101.1 Public Domain.

§ 3101.1–1 Classes and terms.

All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent.

(a) Exceptions: (1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(6) Lands within 1 mile of naval petroleum or helium reserves. No oil and gas lease will be issued for land within 1 mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 3101.1–2 Lands in entries or claims not impressed with reservation of oil and gas.

(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3101.1–3 Unsurveyed lands.

(a) *Showing required.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

(b) *Survey for leasing (competitive).* The survey of unsurveyed lands for a competitive lease for oil and gas will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3101.1–4 Description of lands in offer.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3101.1–5 and the maximum or minimum area to be included in a lease pursuant to § 3111.1 The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

(d) *Protracted surveys.* (1) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(2) An offer may include less than an entire protracted section where only a

portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(e) *Conforming land descriptions.* The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after May 22, 1959, will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3101.1–5 Acreage limitations.

(a) *Maximum holdings.* No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option.

(1) *Exception.* (i) In the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(ii) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(b) *Excepted acreage.* Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(c) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(2) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be canceled or forfeited in their entirely, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interest in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application or offer or option or interest in option which causes him to exceed the acreage limitation, that application or offer will be rejected.

(ii) For tracts not subject to the simultaneous filing procedures of subpart 3112, if he files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group applications, offers, options, or interests in options will be rejected.

(iii) If he files an offer for inclusion in the drawing procedures under subpart 3112, he shall be charged with the acreage thereof only if his offer is successfully drawn so that his offer has first priority. If that offer causes him to exceed the acreage limitation, the offer will be rejected. If he files at the same time a group of offers for tracts subject to the drawing procedures under subpart 3112, any offer which is successfully drawn after he reaches the acreage limitation shall be rejected.

(iv) An optionee is chargeable only for that acreage for which the optionor is chargeable.

(4) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(5) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

(6) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

(d) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

§ 3101.1–6 Effect of Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant

under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

§ 3101.2 Acquired lands.

§ 3101.2–1 Lands to which the Act does not apply.

(a) Acquired for the development of their mineral deposits,

(b) Acquired by foreclosure or otherwise for resale,

(c) Reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.),

(d) In incorporated cities, towns, and villages,

(e) In national parks and monuments,

(f) Set apart for military or naval purposes, including lands within naval petroleum and oil shale reserves, or

(g) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 3101.2–2 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ 3101.2–3 Description of lands in offer.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b)(1) *Lands not surveyed under the rectangular survey system.* If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3101.2–4 Acreage limitation.

The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3101.2–5 Present interest.

(a) *Full and fractional.* Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3101.2–6 Future interest.

(a) *Full or fractional.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as operator holding such rights.

§ 3101.2–7 Exchange of leases.

Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of 5 years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 3103.3–2, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

§ 3101.3 Withdrawn, reserved, and segregated lands.

§ 3101.3–1 Drainage.

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3–3 of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

§ 3101.3–2 Requirements.

(a) *Publication and filing of agreements.* The agreements referred to in § 3101.3–3 of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose.

(b) *Filing of lease offers.* Lease offers for such lands will not be accepted for filing until the 10th day after the agreements and supplemental maps or plats are noted on the land office records.

(c) *Suspension of pending applications.* (1) All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in § 3101.3–3(b)(1) of this section shall have been completed.

(2) *Proposed withdrawals.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

(d) *Special stipulations.* For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior;

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in areas of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or Territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements;

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife;

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern, size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer;

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3101.3–3 Reserved and segregated lands.

(a) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) *Leasing.* No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3–1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order

to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

(b) *Game range lands and Alaska wildlife areas.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely, protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the U.S. Fish and Wildlife Service. Alaska wildlife areas are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the U.S. Fish and Wildlife Service.

(1) *Leasing.* As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the U.S. Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the U.S. Fish and Wildlife Service and the Bureau of Land Management.

(c) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the U.S. Fish and Wildlife Service as the custodial agency of the Government.

(1) *Leasing.* As to coordination lands, representatives of the Bureau of Land Management and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.

§ 3101.4 Special leasing acts (areas).

§ 3101.4–1 Rights-of-way.

Lands in and under railroad and other rights-of-way acquired under any law of the United States.

(a) *Acreage limitations.* No statutory or regulatory limitations.

§ 3101.4–2 Nevada.

All of Township 15 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 16 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 17 South, Ranges 66, 67, 68, East, M. D. M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10′20″, on the south by latitude 37°7′46″, and lying between meridians of longitude 116°20′16″ and 116°23′28″ comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–3 Lands patented to the State of California.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–4 National Forest lands in Minnesota.

Public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 2240 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws, and for the development and utilization of which no other authority exists.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–5 Lake Mead Recreation Area.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–6 National Forest Wilderness.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–7 Whiskeytown-Shasta-Trinity National Recreation Area.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C. 20240.

(a) *Acreage limitations.* See §§ 3101.1–5 and 3101.2–4.

Subpart 3102—Qualifications of Lessees

§ 3102.1 General.

A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts is required.

§ 3102.1–1 Who may hold interests.

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

(a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease will not be issued to a minor, but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 3102.1–2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option

to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right of dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3102.2 Individuals.

§ 3102.2–1 Statement of citizenship.

A statement over the offeror's signature setting forth his citizenship shall accompany each offer when first filed.

§ 3102.2–2 Preference right of patentee or entryman.

(a) *Requirements.* An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) *Notice required.* Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 3102.3 Associations including partnerships.

§ 3102.3–1 Statements.

If the offeror is an association which meets the requirements of § 3102.1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold oil and gas leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth be furnished. Where such material has his citizenship and holdings, shall also previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(a) *Exception.* If the offer is made by an association which does not meet the requirements of § 3102.1–1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3102.4 Corporations.

§ 3102.4–1 Statements.

If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

§ 3102.5 Guardian or trustee.

§ 3102.5-1 Statements.

If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors, and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

§ 3102.5–2 Evidence previously filed.

Where evidence of the authority to act as a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3102.6 Attorney-in-fact.

§ 3102.6–1 Statements.

(a) *Evidence required.* (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3–1), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4–1), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1–5. The statement by the principal (offeror) may be filed within

15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations.

§ 3102.7 Showing as to sole party in interest.

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled.

§ 3102.8 Heirs and devisees (estates).

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3102.1 and 3102.2–1 concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3102.1 and § 3102.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3102.9 Municipalities.

A municipality must submit evidence of: (a) The manner in which it is organized; (b) that it is authorized to hold a permit or lease; and (c) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

Subpart 3103—Fees, Rentals and Royalty

§ 3103.0–3 Authorities.

(a) *Fees.* Act of August 31, 1951 (5 U.S.C. 140).

(b) *Rentals.* See § 3100.0–3.

§ 3103.1 Payments.

§ 3103.1–1 Form of remittance.

Cash, money order, check, certified check, bank draft, and bank cashier's check.

§ 3103.1–2 Where submitted.

(a) *Proper land office.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* (1) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the U.S. Geological Survey.

(2) Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3103.1–3 When submitted.

Each offer, when first filed, shall be accompanied by a filing fee of $25 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part. See also §§ 3103.3–1 and 3103.3–2.

§ 3103.2 Fees.

§ 3103.2–1 General statement.

(a) *Offers and applications.* Offers for noncompetitive oil and gas leases must be accompanied by a filing fee of $25 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be accompanied by a fee of $25, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

§ 3103.3 Rentals and royalties.

§ 3103.3–1 Rental requirement.

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

§ 3103.3–2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed

to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3103.3–3 Fractional interests.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3103.3, 3103.3–4, and 3103.3–5, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3103.3–4 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the mount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3103.3–5 Minimum royalties.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a

minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3103.3–6 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

§ 3103.3–7 Waiver, suspension or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the Oil and Gas Supervisor for oil and gas leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3103.3–8 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the Regional Oil and Gas Supervisor for oil and gas leases, and in the office of the Regional Mining Supervisor for all other leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Oil and Gas Supervisors and the Regional Mining Supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

Subpart 3104—Bonds

§ 3104.0–5 Definitions.

(a) General lease bond.

§ 3104.1 Types of bonds.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties may be furnished for the protection of the entryman or owner of surface rights.

(a) *General lease or drilling bond.* All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations.

(b) *Known structure or competitive lease bond.* The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(c) *Bond for protection of surface owner.* Unless a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

§ 3104.1–1 Where filed and copies.

(a) Proper land office, in single copy.

§ 3104.1–2 When filed.

(a) Prior to commencement of drilling operations.

(b) After notice that lands have been included within the limits of a known geologic structure.

(c) Prior to entry on surface of patented lands.

(d) Prior to issuance of a competitive lease.

§ 3104.1–3 Form of bonds.

The bonds furnished will be on forms approved by the Director.

§ 3104.2 Operator's bond.

§ 3104.2–1 Compliance.

An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold.

§ 3104.2–2 Approval.

An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

§ 3104.2–3 Default.

Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond.

§ 3104.3 Individual sureties.

§ 3104.3–1 Protection.

(a) Entry to leased lands.

(b) Bonds with individual sureties may be furnished for the protection of the entrymen or owner of surface rights.

§ 3104.3–2 Net worth statement.

Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3104.3–3 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3104.3–4 Requirements.

All bonds furnished with individual sureties will be examined every 2 years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required.

§ 3104.3–5 Terms.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations.

§ 3104.3–6 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3104.4 Personal bond or corporate bond.

§ 3104.4–1 Amount.

(a) *Personal bond.* In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

(b) *Corporate bond.*

§ 3104.4–2 Deposit of securities.

Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

§ 3104.4–3 Qualified sureties.

(U.S. Treasury list.)

§ 3104.5 Nationwide bond.

§ 3104.5–1 Amount.

The holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351–369).

§ 3104.6 Statewide bond.

§ 3104.6–1 Amount.

The holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be at the rate of $25,000 for each unit of coverage.

§ 3104.6–2 Unit of coverage.

A unit of coverage shall be all the lands in any one State held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State constitutes two units.

§ 3104.7 Default.

§ 3104.7–1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3104.7–2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3104.7–3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3104.7–4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide or statewide bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3104.8 Unit bond form.

(See 30 CFR § 226.15.)

§ 3104.9 Exploration bond.

(a) *Individual.* Simultaneously with the filing of the Notice of Intent to Conduct Oil and Gas Exploration Operations, and before entry is made on the land, the party or parties filing the "Notice of Intent to Conduct Oil and Gas Exploration Operations" must file with the District Manager a surety company bond in the amount of $5,000, conditioned upon the full and faithful compliance, for each oil and gas exploration operation, with all of the terms and conditions of the regulations in this subpart and of that notice.

(b) *Nationwide.* A $50,000 nationwide bond.

(c) *Statewide.* A statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State.

§ 3104.9–1 Riders to existing bond forms.

(a) *Nationwide and statewide bonds.* Holders of nationwide and statewide oil and gas lease bonds shall be permitted to amend their bonds to include exploration activities in lieu of furnishing additional bonds.

§ 3104.9–5 Termination of period of liability.

The District Manager will not give his consent to the cancellation of the bond if an individual bond was submitted, or to the termination of liability if a State or nationwide bond was submitted, unless and until all of the terms and conditions of the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with. Should the District Manager or any other authorized officer of the Bureau of Land Management fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, liability under an individual bond or liability for a particular oil and gas exploration operation under a state or nationwide bond shall automatically terminate on the 91st day.

Subpart 3105—Cooperative Conservation Provisions

§ 3105.0–7 Cross-references.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226 "Unit or Cooperative Agreements".

§ 3105.1 Cooperative or unit plans.

§ 3105.1–1 Where filed.

All applications to unitize and all documents incident thereto shall be filed in the office of the Oil and Gas Supervisor, Geological Survey in the region in which the unit area is situated.

§ 3105.1–2 Purpose.

The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest.

§ 3105.1–3 Protection of public interest.

The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest.

§ 3105.1–4 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see section 3107.4.

§ 3105.1–5 Requirements.

The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation).

§ 3105.2 Communitization or drilling agreements.

§ 3105.2–1 Where filed.

(a) *Preliminary request.* Preliminary requests to communitize separate tracts shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Executed agreements.* Executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

§ 3105.2–2 Purpose.

The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§ 3105.2–3 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3105.3 Operating, drilling, or development contracts.

§ 3105.3–1 Where filed.

A contract submittted for approval under this provision should be filed with the appropriate Land Office Manager, Bureau of Land Management, together with enough copies to permit retention of five copies by the Department after approval.

§ 3105.3–2 Purpose.

The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

§ 3105.3–3 Requirements.

The contract should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4–1 Where filed.

An application under this section together with enough copies to permit retention of five copies by the Department after approval should be filed with the Director, Bureau of Land Management.

§ 3105.4–2 Purpose.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases.

§ 3105.4–3 Requirements.

The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.

§ 3105.4–4 Rights-of-way.

Rights-of-way for oil and gas pipe lines may be granted as provided for in Group 2800 of this chapter.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5–1 Where filed.

(a) *Application.* Applications for subsurface storage shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Final agreement.* Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 3105.5–2 Purpose.

In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5–3 Requirements.

The final agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5–4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved if it is determined that there is sufficient justification. Each application will be considered on its own merits. Ordinarily, leases to different lessees for different terms, rental, and royalty rates as well as those containing provisions of law which cannot be reconciled, will not be considered for consolidation. The effective date of the consolidated lease will be that of the oldest lease involved.

Subpart 3106—Assignment or Transfers and Subleases

§ 3106.1 Qualifications.

§ 3106.1–1 Who may file.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease.

(a) *Minors*—(1) *Exception.* A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved.

§ 3106.1–2 Failure to qualify.

No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement of interest required by section 3106.1–4.

§ 3106.1–3 Number of copies required.

A single copy of any additional information relating to citizenship and qualifications of corporations will be sufficient. Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under subpart 3102.

§ 3106.1–4 Sole party in interest.

The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease.

§ 3106.1–5 Attorney-in-fact.

Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3102.6.

§ 3106.1–6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3102.8.

§ 3106.2 Requirements.

§ 3106.2–1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease of interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper land office and accompanied by a fee of $10. An application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

§ 3106.2–2 Forms and statements.

(a) *Record title; copies required.* Assignments of record title interests must be filed in triplicate.

(1) *Approved form.* A form approved by the Director, or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of the official form and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office in behalf of the United States.

(2) *Separate instruments required.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

(b) *Other than record title; copies required.* A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

§ 3106.2–3 Bonds.

(a) *Coverage.* If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nationwide or statewide bond, no additional showing is necessary by such party as to the bond requirement.

(b) *Continuing responsibility.* The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 3106.2–4 Royalty and production payments.

(a) *Royalty.* If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them.

(b) *Production payments.* If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. A single copy of any additional information relating to citizenship and qualifications of corporations, will be sufficient.

Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be canceled as provided in subpart 3108.

§ 3106.2–6 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3101.1–4.

(a) *Effect of assignment.* An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3106.3 Approval.

§ 3106.3–1 Approval.

To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties.

§ 3106.3–2 Separate zones.

An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convicing evidence.

§ 3106.3–3 Effective date.

Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by this subpart.

§ 3106.3–4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3106.4 Royalty interests.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3101.1–5 and by the statement as to overriding royalties required by § 3103.3–6. If any portion of this statement is found to be false the assignment shall be invalid.

§ 3106.5 Extensions.

See § 3107.6.

Subpart 3107—Continuation, Extension or Renewals

§ 3107.1 Single extensions.

§ 3107.1–1 Requirements.

(a) *Who may apply.* Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) *Application.* The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director. "Application for Extension of Oil and Gas Lease", or unofficial copies of that form in current use and must be accompanied by a filing fee of $25 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

§ 3107.1–2 Effect of withdrawal of lands.

Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

§ 3107.1–3 Term of extension.

Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.1–4 Segregative effect of application.

The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

§ 3107.1–5 Rejection.

If during the 90-day period prior to the expiration date of the lease, the record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

§ 3107.1–6 Expiration by operation of law.

Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in subpart 3112.

§ 3107.2 Continuation by drilling.

§ 3107.2–1 Terms defined.

(a) *Actual drilling operations.* As used in this section "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas.

(b) *Primary term.* "Primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

§ 3107.2–2 Diligent operations.

Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

§ 3107.2–3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.3 Continuation of lease on termination of production.

§ 3107.3–1 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

§ 3107.3–2 Nonproduction from lease capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: *Provided,* That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

§ 3107.4 Extension for terms of cooperative or unit plan.

§ 3107.4–1 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

§ 3107.4–2 Other leases committed to plan.

Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided,* That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

§ 3107.4–3 Segregation of leases committed in part.

Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.5 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.6 Extension of leases segregated by assignment.

§ 3107.6–1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

§ 3107.6–2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

§ 3107.6–3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.7 Exchange leases.

§ 3107.7–1 20-year leases.

(a) *Requirements and terms.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3103.3–2, 3103.3–4, and 3103.3–5. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8 Renewal leases.

§ 3107.8–1 Requirements.

(a) Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3107.8–2 Terms.

Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3103.3–2, 3103.3–4 and 3103.3–5. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3000.5 at least 90 days, but not more than 6 months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8–3 Approval.

(a) *Acceptable application.* If the outstanding obligations in excess of 5 percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of overriding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) *Unacceptable application.* If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3107.8–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

§ 3107.9 Other types.

§ 3107.9–1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of 1 year from the discontinuance of such payments, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.9–2 Proceedings under Multiple Mineral Development Act of August 13, 1954.

See § 3101.1–6.

Subpart 3108—Terminations and Expirations

§ 3108.1 Relinquishments.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3108.2 Operation of law.

§ 3108.2–1 Automatic terminations and reinstatement.

(a) *Automatic terminations.* Except as provided in paragraph (b) of this section, any lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate land office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in Subpart 3112.

(b) *Exceptions.* If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in the lease or stated in a bill or decision rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency will be considered nominal if it is not more than $10 or five per centum (5 percent) of the total payment due, whichever is more. The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date.

(c) *Reinstatement.* (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. Notices of Termination will not be sent to lessees whose leases terminated prior to May 12, 1970. Lessees whose leases terminated prior to May 12, 1970, must file petitions for reinstatement with the appropriate office by close of business on December 31, 1971. Such petitions are subject to all other appropriate provisions of this section.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary.

(d) *Extension of terms of reinstated leases.* In any case where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may, at his discretion, extend the term of such lease for such period as he believes will give the lessee such an opportunity. Such extensions shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date on which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

(e) *Service of documents.* The rules governing filing and service of documents set out in § 1840.0–6(e) of this chapter shall apply to notices of deficiency and termination issued under the provisions of this section .

§ 3108.2–2 Expiration.

§ 3108.2–3 Noncompliance with leasing act or lease terms.

Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

§ 3108.3 Judicial proceedings.

Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

Subpart 3109—Surface Management Requirements

§ 3109.1 General.

§ 3109.1–1 Surface, natural resources, and improvements.

§ 3109.1–2 Antiquities and objects of historical value.

§ 3109.2 Public domain.

§ 3109.2–1 Bureau of Land Management stipulations.

The Bureau of Land Management may require such special stipulations as are

necessary for the protection of the lands embraced in any permit or lease.

(See Montana Power Decision A 30310 December 3, 1965, I.M. No. 65-560 December 23, 1965)

§ 3109.3 Acquired lands.

§ 3109.3-1 Consent of agency.

Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered.

§ 3109.4 Reserved, withdrawn, or segregated lands.

§ 3109.4-1 Requirements.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3109.4-2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3109.5 Special acts.

§ 3109.5-1 Requirements.

§ 3109.5-2 Special stipulations.

(a) Rights-of-way.

(b) Nevada.

(c) Lands patented to the State of California.

(d) National forest lands in Minnesota. Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

(e) Lake Mead recreation area.

(f) National Forest Wilderness. (1) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(2) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(g) Whiskeytown-Shasta-Trinity national recreation area. Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

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Subpart 3112—Simultaneous Offers

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Subpart 3110—Noncompetitive Leases

§ 3110.1-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities.

(a) *Special acts*—(1) *Rights-of-way.* The term of the lease will be for a period of not more than 20 years and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 3110.1-2 Dating of leases.

All noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3110.1-3 Acreage limitation.

(a) *Public domain.* An offer may be made by a legal guardian or trustee in his name for the benefit of a nonalien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of 6 miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act.

(b) *Acquired lands.* An offer may not include more than 2,560 acres except where the rule of approximation applies. That portion of § 3110.1-3(a) providing that an offer may not be made for less than 640 acres is not applicable to acquired lands lease offers.

§ 3110.1-4 Withwdrawal of offer.

(a) *Regular filings.* An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) *Simultaneous filings.* An applicant may withdraw his simultaneous offer drawing card prior to the drawing.

§ 3110.1-5 Amendment to lease.

If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as

the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3110.1–2.

§ 3110.1–6 Determination of priorities.

(a) *Regular filing.* No lease shall be issued before final action has been taken on (*a*) any prior offer to lease the land, (*b*) any subsequent offer to lease the land that is based upon an alleged preferential right and (*c*) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land. Offers to lease which cover lands subject to regular filings and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(b) *Simultaneous filings.* If more than one offer to lease all or any part of the acreage covered by an expired, canceled, relinquished, or terminated lease is filed during the period provided for in subpart 3112, their priorities will be determined by a public drawing.

§ 3110.1–7 Land description.

(a) *Variation in land description.* If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control.

§ 3110.1–8 Rejections.

If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

Subpart 3111—Regular Offers

§ 3111.1 Requirements.

§ 3111.1–1 Public domain.

(a) Application—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(b) *Qualifications.* Compliance with subpart 3102 is required.

(c) *Approval.* The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(d) *Rejection.* Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

(e) *Curable defects.* An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(2) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(3) An offer completed in pencil or script.

(4) An offer on a lease form not currently in use.

(5) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

§ 3111.1–2 Acquired lands.

(a) *Application*—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising. An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management. Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5). For the purposes of this part an offer will be considered filed when it is received in the proper office during business hours.

(2) *Qualifications.* Compliance with subpart 3102 is required.

(3) *Approval.* Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

(4) *Rejection.* Except as provided in subpart 3112 an offer which is not filed in accordance with the applicable regulations in subpart 3110 or this part will be rejected and will afford the applicant no priority.

(5) *Surface jurisdiction*—(i) *Showing required.* All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(ii) *Transfer of surface control.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(6) *Acreage holdings.* Each offer or application for a lease or permit must contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally owned acquired lands in the same State.

(7) *Other regulations applicable.* Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in subpart 3110 and § 3111.1 shall govern the disposal and development of minerals under the act.

§ 3111.1–3 Special acts.

(a) *Rights-of-way*—(1) *Application.* No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in

the appropriate land office. Such applications must be filed by the owner of the right-of-way or by his assignee and be accompanied by a filing fee of $25, and, if filed by an assignee, by a duly executed assignment of the right to lease. The application should detail the facts as to the ownership of the right-of-way, and of the assignment if the application is filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production, and the probability of drainage of the deposits in the right-of-way. Since rights-of-way are of record in the Bureau of Land Management, a description by metes and bounds is not necessary or required, but each legal subdivision through which the portion of the right-of-way desired to be leased extends should be described.

(2) *Compensatory royalty.* After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on his own motion, the manager of the land office will serve notice on the owner or lessee of the adjoining lands, as provided in section 3 of the act of May 21, 1930 (46 Stat. 374; 30 U.S.C. 303), allowing him 30 days or such other time as may be provided in the notice within which to submit an offer or bid of the amount or percentage of compensatory royalty such owner or lessee will agree to pay for the extraction through wells on his adjoining land of the oil and gas under and from such right-of-way. Notice to the owner of the right-of-way will be given at the same time allowing him opportunity within the same period to submit a bid or offer as to the amount or percentage of royalty he will pay if a lease is awarded to him.

(3) *Award of lease or compensatory royalty agreement.* Award of lease to the owner of the right-of-way, or of a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands, will be made to the bidder whose offer is determined to be to the best advantage to the United States, considering the amount of royalty to be received and the better development of the oil and gas deposits in the right-of-way under the respective means of production and operation.

(4) *Forms*—(i) *Compensatory royalty agreement.* The agreement with the owner or lessee of the adjoining land to pay compensatory royalty for the extraction through wells on his adjoining land of the oil and gas in or under the right-of-way will be on a form approved by the Director.

(ii) *Lease.* The lease issued to the owner of the right-of-way or assignee of such owner will be on a form approved by the Director, modified to conform to the requirements of the law and these regulations.

(iii) *Bond.* The bond required under section 2(a) of the lease and by the contractor under agreement to pay compensatory royalty, should be on a form approved by the Director.

(5) *Royalty charge.* The royalty to be charged will be fixed by the Bureau of Land Management, after consideration of all the facts and circumstances in each case, but will not be less than 12½ percent.

(6) *Duration.* The term of the lease will be for a period of not more than 20 years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

(b) *Nevada*—(1) *Applicability of regulations.* Deposits of oil and gas within the lands shall be subject to disposal pursuant to the applicable regulations issued under the Act of February 25, 1920 (41 Stat. 437) as amended.

(c) *Lands patented to the State of California*—(1) *Minerals to be leased.* All disposal of minerals within the reserved areas covered by this section shall be by lease.

(2) *Applicability of other regulations.* The regulations contained in subparts 3110 and 3111 to the extent that they are applicable and not inconsistent with this section shall govern oil and gas leases issued under this section.

(3) *Notice of application.* The Manager of the Land Office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

(4) *Terms and conditions*—(i) *Protection of surface.* All leases issued shall be conditioned upon compliance by the lessee with all of the laws or rules and regulations of the surface owner for the safeguarding and protection of the plant life, scenic features and park or recreational improvements on the land, not inconsistent with the terms of the lease or this section. The lease shall also provide that any mining work performed upon the lease shall be located consistent with any requirements of the owner of the surface necessary to the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine for all necessary purposes shall be on a route to be first approved by the surface owner or his duly authorized representative.

(ii) *Bonds.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

(iii) *Form of lease.* Oil and gas leases will be issued on forms approved by the Director, with such changes in language as may be required.

(5) *Operating regulations.* All lessees will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in 30 CFR Chapter II Part 221.

(d) *National forest lands in Minnesota*—(1) *Minerals to be leased.* All disposal of mineral resources covered by this regulation shall be by lease or permit.

(2) *Consent of Secretary of Agriculture.* Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

(3) *Regulations applicable.* See subparts 3110 and 3111. Any lease issued under this subpart shall state that it is subject to the terms and provisions of the act of June 30, 1950.

(e) *Lake Mead Recreation Area*—(1) *Authority to lease.* The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

(2) *Regulations applicable.* Mineral deposits of oil and gas shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended.

(3) *Area subject to lease.* The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the Superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(4) *Excepted areas.* Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(i) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(ii) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(iii) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands

within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA—L.M. 2291).

(iv) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA—L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

(f) *National Forest Wilderness*—(1) *Applicability of laws and regulations.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(2) *Stipulations required.* All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(3) *Applicable regulations of Secretary of Agriculture.* All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(4) *Withdrawal from mineral leasing.* Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

(g) *Whiskeytown-Shasta-Trinity National Recreation Area.* Applicability of regulations. Mineral deposits of oil and gas shall be governed by the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181–263), as amended.

Subpart 3112—Simultaneous Offers

§ 3112.1–1 Availability of lands.

(a) Lands in canceled or relinquished leases or in leases which terminate by operation of law for non-payment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

(b) If no offers to lease all or any portion of the lands in the expired, canceled, relinquished or terminated leases are received during the period provided for in § 3112.1–2, the lands for which no offers are received will thereafter become subject to lease in accordance with regulations in this part.

§ 3112.1–2 Posting of notice.

On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were canceled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3101.1–4, by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds.

§ 3112.2 Forms.

§ 3112.2–1 Offer to lease.

(a) *Entry Card.* Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee.

(1) The entry card must be accompanied by a remittance covering the filing fee of $25. The filing fee may be paid in cash or by money order, bank draft, bank cashier's check or check.

(2) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included. An offeror (applicant) is permitted to file only one offer to lease (entry card) for each numbered parcel on the posted list. Submission of more than one entry card by or on behalf of the offeror for any parcel on the posted list will result in the disqualification of all the offers submitted by that applicant for that particular parcel.

(3) Three entry cards will be drawn for each numbered leasing unit, and the order in which they are drawn will fix the order in which the successful drawee will be determined. Where less than three entry cards have been filed, all cards will be drawn to determine priority.

(4) Unsuccessful drawees will be notified by the return of their respective entry cards.

§ 3112.3 Qualifications.

§ 3112.3–1 Compliance with subpart 3102 is required.

§ 3112.4 Approval.

By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing.

§ 3112.4–1 Rental payment.

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

§ 3112.5–1 Unqualified offeror.

If the successful drawees for a particular leasing unit are unqualified to receive the lease for any reason, including timely payment of the first year's rental, the lands in the numbered leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

§ 3112.5–2 Multiple filings.

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1–6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3102.1–2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.
3120.1 Terms.
3120.1–1 Duration of lease.
3120.1–2 Dating of lease.
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3120.2 Notice of lease sale.
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3120.3–2 Compliance with award notice.
3120.4 Rejection.
3120.4–1 Failure to comply with award notice.
3120.4–2 Deposits on rejected bids.

§ 3120.1 Terms.

§ 3120.1–1 Duration of lease.

All competitive leases shall be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3120.1–2 Dating of leases.

All competitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made, a lease may be dated the first of the month within which it is so signed.

§ 3120.1–3 Acreage limitation.

(a) *Maximum lease size.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible.

(b) *Consolidation of units.* If two or more units are awarded to any bidder, such units where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3120.1–4 Qualifications.

(a) *Compliance with subpart 3102 is required.*—(1) Statement required. Each bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by § 3102.4–1.

(b) *Deposit required.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the Manager of the Land Office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him.

§ 3120.2 Notice of lease sale.

§ 3120.2–1 Initiation of offer.

§ 3120.2–2 Publication of notice.

Notice of the offer of lands for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize.

§ 3120.2–3 Contents of notice.

The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3120.3 Approval.

§ 3120.3–1 Award of lease.

Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office.

§ 3120.3–2 Compliance with award notice.

If the lease be awarded, three copies of the lease on a form approved by the Director, with rental and royalty schedules made a part thereof, will be sent to the successful bidder and he will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later to execute them, pay the balance of his bonus bid, the first year's rental and file a bond as required in subpart 3104. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

§ 3120.4 Rejection.

§ 3120.4–1 Failure to comply with award notice.

If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act.

§ 3120.4–2 Deposits on rejected bids.

If any bid be rejected, the deposit will be returned.

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Subpart 3130—Fractional or Future Interest Leases and Permits

Sec.
3130.1 Competitive and noncompetitive.
3130.2 Rental and royalties.
3130.3 Public domain.
3130.3–1 Fractional interest offers.
3130.4 Acquired lands.
3130.4–1 General statement.
3130.4–2 Consent of agency and stipulations required.
3130.4–3 Forms.
3130.4–4 Fractional present interests.
3130.4–5 Future and fractional interest offers.

§ 3130.1 Competitive and noncompetitive.

Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part and subpart 3120.

§ 3130.2 Rental and royalties.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in subpart 3103 as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3130.3 Public domain.

§ 3130.3–1 Fractional interest offers.

(a) Application. An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with subpart 3111. The offer must be accompanied by a statment showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3130.4 Acquired lands.

§ 3130.4–1 General statement.

Subject to the provisions of section 3 of the Act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3101.2–3, 3111.1–2 and this section. The terms and conditions of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements

under § 3100.3–1 covering future or fractional interests, will be established on an individual case basis.

§ 3130.4–2 Consent of agency and stipulations required.

All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project if any, of which the land is a part. Leases to which such consent is necessary will not be issued until lessee executes such stipulations as may be required by the consenting agency.

§ 3130.4–3 Forms.

All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

§ 3130.4–4 Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3130.4–5 Future and future fractional interest offers.

(a) *Application.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3101.2–3, 3111.1–2, and this section, and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made.

(b) *Effective date of lease.* Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable; when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Approval.* Leases for a whole or fractional interest will be issued on a form approved by the Director. Such leases will be sent to the applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

GPO 854 - 422

This Circular replaces Circulars 2334 and 2348.

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular 2358]

PART 2920—SPECIAL LAND USE PERMITS

Subpart 2920—Principles and Procedures, General

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Subpart 2923—Commercial Facilities and Services

2923.1 Applicability of general regulations.
2923.2 Applications.
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2923.4 Terms and conditions of permits.
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Subpart 2924—Sports Events, Races, and Rallies

2924.1 Applicability of general regutions.
2924.2 Additional requirements.
2924.3 Terms and conditions of permits.

Subpart 2920—Principles and Procedures—General

§ 2920.0–2 Objectives.

(a) *General.* It is the policy of the Secretary of the Interior, in the administration of the lands under the jurisdiction of the Bureau of Land Management, to permit the beneficial use thereof, where practical, for special purposes not specifically provided for by existing law. Permits for such special use will not be issued, however, in any case where the provisions of any law may be invoked. Permits will not be issued where such issuance would be inconsistent with the objectives of the regulations in this chapter or would be in conflict with any Federal or State laws.

§ 2920.0–3 Authority.

Pursuant to sections 446, 453 and 2478 of the Revised Statutes (1875), as amended, 43 U.S.C. secs. 1, 2, 1201 (1964); the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. secs. 1411–1418 (1964)); the Act of July 14, 1960 (70 Stat. 506; 43 U.S.C. secs. 1361–1364 (1964)) and other authority, the Director of the Bureau of Land Management is authorized to perform, under the direction of the Secretary of the Interior, all executive duties relating to the public lands and other lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2920.0–5 Definitions.

For the purposes of the regulations in this subpart,

(a) The term "advertising displays" means any signs or other devices erected or maintained for outdoor advertising or for outdoor public information purposes, except signs erected and maintained by Federal, State, or local highway authorities within highway rights-of-way.

(b) The word "highway" is used in its general sense to include all routes of public surface travel.

(c) The word "lands" means lands administered by the Secretary of the Interior through the Bureau of Land Management.

(d) The term "commercial facilities and services" means accommodations, equipment, and other related supplies and services provided by a private entrepreneur, whether an individual, group, association or qualified corporation, to facilitate public use of outdoor recreation resources. These facilities and services may include but are not limited to: Resorts, hotels, motels, trailer camps, restaurants, stores, automotive and transportation services, guide and outfitter services, marinas, and ski slopes including lifts and tows.

(e) The term "sports events, races and rallies" means any outdoor sports event, including motorized vehicular events.

§ 2920.1 Application.

(a) *Qualification of applicants.* Applications pursuant to this subpart may be filed by any of the following: (1) Any person 21 years of age, or over, who is a citizen of the United States, or who has declared his intention to become a citizen, (2) any group or association composed of such persons, (3) any corporation organized under the laws of the United States or of any State thereof, authorized to conduct business in the State in which the land involved is situated, (4) any agency of the Federal Government, or (5) any State or political subdivision thereof.

(b) *Form to be used.* Applications must be executed on a form approved by the Director.

(c) *Filing.* The application may be filed in any office of the Bureau of Land Management having jurisdiction over the lands.

§ 2920.2 Fees.

Each application for a special land-use permit or a renewal thereof must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

§ 2920.3 Terms.

(a) *General.* (1) A special land-use permit will be revocable in the discretion of the authorized officer at any time, upon notice, if in his judgment the lands should be devoted to another use, or the conditions of the permit have been breached.

(2) A special land-use permit will not be issued for a larger area than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed.

(b) *Stipulations.* A special land-use permit shall contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Renewals.* Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will, upon

the filing of an application for renewal, be the preferred applicant for a new permit, under regulations then in force, provided no superior claim to the land has been asserted in the meantime. Renewal, if granted, will be in the form of a new permit.

(d) *Liability.* The applicant shall agree and stipulate that the Federal Government, Department of the Interior and the Bureau of Land Management and its representatives shall not be responsible for damage or injury to persons and property which may occur during the permitted use period or as a result of such use.

§ 2920.4 Rental charges.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise; he may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

(b) No rental charges will be made for special land-use permits to agencies of the Federal Government and agencies of States and political subdivisions thereof.

(c) No refunds of rentals properly paid will be made because of the revocation of the permit at any time, or because of interference with or prevention of the exercise of the privileges granted by the permit, by mineral prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), or by grantees or permittees of rights-of-way under existing laws.

§ 2920.5 Rights of applicants and permittees.

(a) *Occupancy of land prior to permit.* An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit under this or other applicable regulation, or any use thereafter except in accordance with the terms of the permit, is unauthorized, and constitutes a trespass (see Subpart 9239 of this chapter).

(b) *Timber and other materials.* A special land-use permit will not entitle an applicant to cut and remove timber or remove any other materials from the land. If he wishes permission to do so, he must make application for such permission in accordance with the governing laws and regulations.

(c) *Assignment of permit.* (1) A permittee may not assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be accompanied by a statement signed by the assignee agreeing to be bound by the provisions of the permit if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 2920.1(a).

(2) All applications for assignment of special land-use permits must be accompanied by a nonrefundable application service fee of $10.

(d) *Removal of improvements.* After the revocation or expiration of a permit, the permittee may, within the time specified by the authorized officer, remove all structures which have been placed upon the premises by him or his assignor, provided all rental charges due the Government have been paid. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment or, upon revocation or expiration of the permit, fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 2920.6 Segregative effect.

The lands embraced within special land-use permits will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, including:

(a) Applications and selections under nonmineral laws, subject to the revocation of the permit.

(b) Prospecting, location, developing, mining, entering, leasing, or patenting of minerals under the applicable general mining laws or mineral leasing laws.

(c) Permits issued under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), to explore for objects of antiquity on the public lands.

(d) The acquisition by grant or permit of rights-of-way under existing laws.

Subpart 2921—Advertising Displays

§ 2921.0–6 Policy.

(a) No permits will be issued for lands within rights-of-way, within 660 feet of the edge of the rights-of-way of the National System of Interstate and Defense Highways (Interstate System) and the primary system (title 23, United States Code), or for displays which would be visible from such highways.

(b) Permits for advertising displays on other areas will be issued only for displays advertising activities on or within 50 feet of the property where the display is located.

(c) Natural beauty: Notwithstanding any other provision of this subpart, no permit will be issued for the erection and maintenance of any advertising display which would be inconsistent with national programs for the preservation of natural beauty.

§ 2921.0–7 Cross reference.

All the general provisions of § 2920.1 to § 2920.5(d) not inconsistent with the special provisions relating to permits for advertising displays are applicable to such permits.

§ 2921.1 Applications.

In addition to the requirements of Subpart 2920, an application for a special land-use permit for an advertising display shall contain sufficient information concerning the nature, design, and lighting effect, if any, of the display to enable its construction from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, must be furnished. The application must identify the highway along which it is proposed to erect the display and must give the distance and direction of the site, measured by highway travel to the nearest cities or towns.

§ 2921.2 Identification of displays.

Each advertising display erected or maintained under a permit issued pursuant to the regulations of this subpart, must, for convenient identification, have the serial number of such permit marked or painted thereon.

§ 2921.3 Removal of advertising displays.

(a) *Terminated permits.* Within 30 days after the revocation or expiration of any permit for an advertising display, the permittee shall completely remove the display from the property. If the permittee fails to so remove the display, the authorized officer will remove it at the expense of permittee and may dispose of it in any manner deemed appropriate without any obligation whatever to the permittee.

(b) *Unauthorized displays.* The authorized officer will remove any advertising display placed on public lands without a permit. In the event that the identity of the person who erected the display is indicated on the display, the authorized officer will give the person 30 days to completely remove the display. If the display is not removed within that time, the authorized officer will remove and dispose of it in any manner deemed appropriate.

§ 2921.4 Renewal of permits.

No permit for any advertising display shall be renewed unless the display meets the requirements of the regulations in this part.

Subpart 2922—Water Wells

§ 2922.0–7 Cross reference.

All of the general provisions of § 2920.1 to § 2920.5(d) not inconsistent with the special provisions relating to permits for drilling water wells are applicable to such permits.

§ 2922.1 Terms of permit.

(a) The authorized officer may include in the permit provisions for testing of wells and for examination of records.

(b) Permits for exploratory wells shall provide that if and when the permittee abandons a well:

(i) He will notify the authorized officer of the Bureau of Land Management of the abandonment or proposed abandonment. The authorized officer will allow the permittee a reasonable time to cap or plug the well and restore the site to the satisfaction of the authorized officer. Unless the authorized officer purchases them, the permittee will be permitted to remove his improvements to the extent that such removal does not prevent restoration of the site to the satisfaction of the authorized officer.

(c) The authorized officer may require a surety bond as a condition precedent to the issuance of a well permit, to insure proper capping or plugging of the well and restoration of the site.

(d) Renewals may be granted only if, before the expiration of his prior permit, the applicant has:

(1) Actually initiated well drilling on the land, with a firm commitment to have the well completed without delay; or

(2) Encountered unforeseeable difficulty, and although no drilling has been initiated, has made a firm commitment to have the well completed without delay.

Subpart 2923—Commercial Facilities and Services

§ 2923.1 Applicability of general regulations.

All of the general provisions of § 2920.1 to 2920.5(d) not inconsistent with the special provisions relating to permits for the provision of commercial facilities and services are applicable to such permits.

§ 2923.2 Applications.

In addition to the requirements of Subpart 2920, each application for a special land use permit to provide commercial facilities and services to the public must be accompanied by three copies of a statement describing (1) the proposed use of the lands, (2) public services to be provided, (3) estimated capital investment, and (4) a showing that the application involves an established or definitely proposed project. The application shall include sufficient detail concerning the plan of development to describe the facilities and/or services and their purpose adequately.

§ 2923.3 Additional requirements.

Rental charges: Rental payments to the Government for permits shall provide a fair return to the United States.

§ 2923.4 Terms and conditions of permits.

§ 2923.4–1 Protection.

Each permit issued by the authorized officer will contain provisions deemed necessary to protect the public health and safety, and will provide for periodic inspections for compliance.

§ 2923.4–2 Stipulations.

Each permit to provide commercial facilities and services shall contain stipulations requiring conformance with reasonable public service rules, schedules, or charges, and any other provisions necessary to protect the public interest and the public values in the lands, as may be determined by the authorized officer.

Subpart 2924—Sports Events, Races and Rallies

§ 2924.1 Applicability of general regulations.

All of the general provisions of 2920.1 to 2920.5(d) not inconsistent with the special provisions relating to permits for sports events, races, and rallies are applicable to such benefits.

§ 2924.2 Additional requirements.

In addition to the requirements of Subpart 2920 each application for a special land use permit for a sports event, race, rally, meet, or other contest or event shall be accompanied by three copies of:

(a) A map or diagram of the proposed route of the event in sufficient detail for an on-the-ground inspection of the proposed route or location of the event.

(b) A description of the purpose of the event and estimated number of persons participating.

(c) A description, if motorized vehicles are involved, of the type and estimated number of vehicles participating.

§ 2924.3 Terms and conditions of permits.

(a) Notwithstanding any other provision of this subpart, the authorized officer may reject any application for any activity which he considers will constitute undue hazard to participants and spectators or will irreparably impair scenic and other values.

(b) The authorized officer may require a surety bond before issuing a permit under this section. This bond shall insure:

(1) Cleanup of litter and removal of all markers or other temporary installations.

(2) Repair of any improvements damaged as a result of the permitted use.

(3) Restoration of any lands requiring stabilization as a result of the event.

(c) The authorized officer is authorized to release a permittee from the bond, when all terms and conditions are met.

This circular replaces Circulars 1916 and 2247, and that portion of Circular 2257 relating to Part 2920.

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2359]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

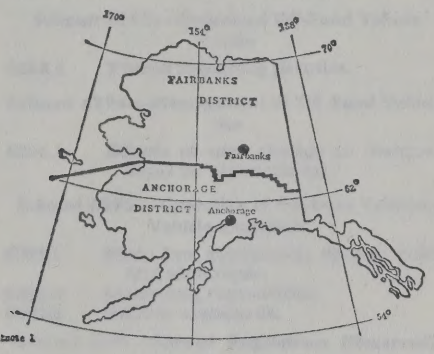
PLACE FOR FILING—ALASKA

Section 1821.2–1 is amended by inserting a revised map of the Alaska District boundaries in paragraph (d).

§ 1821.2–1 Office hours; place for filing.

* * * * *

(d) * * *



JACK O. HORTON,
Assistant Secretary of the Interior.

FEBRUARY 8, 1974.

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Replaced by Circ 2311

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT

SUBCHAPTER F—OUTDOOR RECREATION AND WILDLIFE MANAGEMENT

[Circular No. 2360]

PUBLIC LANDS

Use of Off-Road Vehicles

Chapter II, Title 43, of the Code of Federal Regulations is amended as follows:

PART 2070—DESIGNATION OF AREAS AND SITES

1. A new paragraph (c) is added to § 2071.1 to read as follows:

§ 2071.1 Areas or sites that may be designated.

* * * * *

(c) The provisions of this part do not apply to designation of areas and trails made pursuant to Part 6290 of this chapter.

PART 2920—SPECIAL LAND USE PERMITS

2. A new § 2924.3–1 is added to Part 2920 to read as follows:

§ 2924.3–1 Off-road vehicle events.

(a) In addition to other requirements of this part, the application shall be for a specific time and period of use.

(b) The authorized officer may require the applicant to submit supplemental information in sufficient detail to evaluate the impact of the proposed event upon the environment, including measures the applicant would take to assure minimum practicable disturbance to the environment consistent with other uses of the area.

(c) As a condition of permit issuance, the authorized officer shall require the permittee to furnish bond, surety or other guarantee in such amounts as may be required to cover cost of restoration and rehabilitation of the trails and areas used, and such other special costs attributable to the events.

PART 6250—RECREATION ACCESS

§ 6250.1–2 [Amended]

3. Paragraph (c) of § 6250.1–2 of Part 6250 is deleted.

Subpart 6251 [Deleted]

4. Subpart 6251 of Part 6250 is deleted.

PART 6290—OFF-ROAD VEHICLES

5. A new Part 6290 is added to Group 6200 to read as follows:

Subpart 6290—General

6290.0–1 Purpose.
6290.0–2 Objectives.
6290.0–3 Authority.
6290.0–5 Definitions.
6290.0–8 Applicability.

Subpart 6291—Use of Off-Road Vehicles

6291.1 Use of Off-Road Vehicles.

Subpart 6292—Designation of Public Lands

6292.1 Classes of designation.
6992.2 Designation.
6292.3 Designation criteria.
6292.4 Procedures for designation.

Subpart 6293—Organized Off-Road Vehicle Events

6293.1 Events requiring permits.

Subpart 6294—Management of Off-Road Vehicle Use

6294.1 Effects of use; change in designations or restrictions.

Subpart 6295—Operation of Off-Road Vehicles; Vehicle Standards

6295.1 State law applicable; special rules and standards.
6295.2 Operating regulations.
6295.3 Vehicle standards.

Subpart 6296—**Special Regulations [Reserved]**

AUTHORITY: 43 U.S.C. 1201; the National Environmental Policy Act of 1969, 42 U.S.C. 4321; 43 U.S.C. 2, 1201; and Executive Order 11644 (37 FR 2877).

Subpart 6290 – General

§ 6290.0–1 Purpose.

The purpose of the regulations in this part is to implement Executive Order No. 11644, of February 8, 1972 (37 FR 2877).

§ 6290.0–2 Objectives.

The objective of these regulations is to provide procedures to control and direct the use of off-road vehicles on public lands so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 6290.0–3 Authority.

The provisions of this part are issued under 43 U.S.C. 1201; the National Environmental Policy Act of 1969, 42 U.S.C. 4321; 43 U.S.C. 2, 1201; and Executive Order 11644 (37 FR 2877).

§ 6290.0–5 Definitions.

As used in this part:

(a) Except as excluded hereinafter, "Off-Road Vehicle" means any vehicle designed for, or capable of, travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, including, but not limited to: Automobiles, trucks, four-wheel drive or low-pressure-tire vehicles, tracked vehicles, motorcycles and related two-wheel vehicles, snowmobiles, amphibious machines, ground-effect or air-cushion vehicles, recreation campers, and any other means of transportation deriving motive power from any source other than muscle. The term "Off-Road Vehicle" excludes: (1) Any non-amphibious registered motorboat; (2) any fire, emergency, or law enforcement vehicle while being used for official or emergency purposes; (3) any vehicle whose use is expressly authorized by a permit, lease, license, agreement, or contract issued by the authorized officer.

(b) "Public Lands" means any lands administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take actions under the regulations of this chapter.

(e) "Organized Event" means a structured, or consolidated, or scheduled meeting involving 25 or more vehicles for the purpose of recreational use of the public lands involving the use of off-road vehicles. The term does not include family groups participating in informal recreational activities.

(f) "Official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his/her employment, agency, or representation.

(g) "Planning system" means the approach provided in Bureau of Land Management directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

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Circular Distribution List

§ 6290–0–8 **Applicability.**

(a) The regulations in this part apply to all public lands except those Federal, State, county, or municipal highways and roads administered by an agency other than the Bureau of Land Management.

(b) The regulations contained in subpart 6296 are special regulations prescribed for the use of off-road vehicles for specific areas, and such regulations may amend, modify, relax, or make more stringent the regulations contained in §§ 6295.2 and 6295.3 of this chapter.

Subpart 6291—Use of Off-Road Vehicles

§ 6291.1 **Use of Off-Road Vehicles.**

(a) Off-road vehicles operated on the public lands must conform to the vehicle standards set forth in Subpart 6295 of this part.

(b) Any person who operates an off-road vehicle on public lands must comply with the operating regulations set forth in Subpart 6295 of this part at all times and subpart 6296 as applicable while operating such vehicle on public lands.

(c) The operation of off-road vehicles is prohibited on those areas and trails designated as closed to off-road vehicle use except that the authorized officer may allow official use or use pursuant to Part 2920 of this chapter. Such authorization will be for a specific area, conditions of use and period of time and shall be revocable at the discretion of the authorized officer.

(d) Operators of off-road vehicles on those areas and trails designated as restricted must conform to all terms and conditions of the applicable designation order or orders.

(e) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(f) Off-road vehicles are prohibited on trails limited to hiking and horseback riding.

Subpart 6292—Designation of Public Lands

§ 6292.1 **Classes of designation.**

Public lands will be designated as follows with regard to off-road vehicle use:

(a) *Open use areas and trails.* These are areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle standards set forth at Subpart 6295 of this part.

(b) *Restricted areas and trails.* These are areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the numbers or types of vehicles allowed, times of use, and similar matters. Restricted areas and trails may be designated for special or intensive use, including, but not limited to, organized events.

(c) *Closed areas and trails.* These are areas and trails where the use of off-road vehicles is permanently or temporarily prohibited.

§ 6292.2 **Designation.**

(a) The authorized officer may designate any public lands as restricted or closed to off-road vehicle use. Public lands not so designated shall remain open to off-road vehicle use and are hereby designated as open use areas and trails except that restrictions and closures regarding the use of public lands that result from authority other than part 6290 shall not be affected by the open use designation of this paragraph.

(b) The authorized officer may redesignate any public lands, including those designated as open to off-road vehicle use, at any time hereafter if he/she determines that redesignation is appropriate.

(c) The authorized officer may temporarily close or restrict public use and travel in accordance with the provisions of § 6010.4 of this chapter, even though public lands have been designated or redesignated in accordance with this subpart.

(d) The authorized officer may apply for the withdrawal, reservation or restriction of public lands in accordance with the withdrawal procedures in Part 2350 of this chapter, even though public lands have been designated or redesignated in accordance with this Subpart.

§ 6292.3 **Designation criteria.**

Designations of restricted and closed areas and trails will be based on the following:

(a) The ability of the land and its resources to withstand and sustain off-road vehicle use impacts.

(b) Consideration of the scenic qualities of the land, and its cultural, ecological, and environmental values.

(c) The need for public use areas for recreation use.

(d) Consideration of off-road vehicle use impacts on other lands, use, and resources.

(e) The potential hazards to public health and safety, other than the normal risks involved in off-road vehicle use.

(f) The existing or potential quality and quantity of recreational experiences available.

(g) Consideration of the need to minimize harassment of wildlife or significant disruption of wildlife habitat.

(h) The furtherance of the purposes and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

§ 6292.4 **Procedures for designation.**

(a) *Public participation.* The authorized officer shall to the extent practicable, designate and redesignate areas and trails in conformance with the Bureau of Land Management planning system for the formulation of multiple use management plans. In making designations, he/she will consult with interested user groups, Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account. The authorized officer may act independently of the planning system if he/she deems emergency action to close or restrict areas and trails is essential to attain the objectives of the regulations of this part.

(b) *Identification of designated areas and trails.* The authorized officer shall take appropriate measures to identify areas and trails designated as restricted or closed so that the public will be aware of their locations and restrictions applicable thereto. Public notice of such designations shall be given through publication in local newspapers, and copies of such notices shall be available to the public in local Bureau offices. Areas and trails so designated shall be posted appropriately. The authorized officer will make available to the public such other informational material as may be appropriate.

Subpart 6293—Organized Off-Road Vehicle Events

§ 6293.1 **Events requiring permits.**

No person or association of persons may conduct any race, rally, meet, contest, or other type of organized event involving the use of off-road vehicles, on public lands without first obtaining a permit to do so from the authorized officer pursuant to Subpart 2924 of Part 2920 of this chapter.

Subpart 6294—Management of Off-Road Vehicle Use

§ 6294.1 **Effects of use; changes in designations or restrictions.**

The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever he/she deems it necessary to carry out the objectives of this part, he may amend, revise, or revoke any designations made or other actions taken pursuant to the regulations in this part.

Subpart 6295—Operation of Off-Road Vehicles; Vehicle Standards

§ 6295.1 **State law applicable; special rules and standards.**

(a) Applicable State laws and regulations relating to the use, registration, operation and inspection of off-road vehicles shall apply on public lands.

(b) The authorized officer may establish special rules for the operation of off-road vehicles and special vehicle standards for use on a regional, geographic or operating level applicable to all or any type of off-road vehicle. Notice of such special rules and standards shall be published in the FEDERAL REGISTER, and the public shall be provided the opportunity to comment before adoption.

(c) To the extent that State laws and regulations are lacking or less stringent than the regulations established by this Subpart 6295, the regulations in Subpart 6295 are minimum standards and are controlling.

§ 6295.2 Operating regulations.

No person may operate an off-road vehicle on public lands without a valid operator's license or learner's permit unless accompanied by an adult who has a valid operator's license and who is responsible for the acts of that individual. No person shall operate an off-road vehicle on public lands:

(a) In a reckless, careless, or negligent manner;

(b) In excess of established speed limits;

(c) While under the influence of alcohol or drugs;

(d) In a manner likely to cause excessive damage to or disturbance of the land, wildlife, wildlife habitat, or vegetative resources; or

(e) From a half-hour after sunset to a half-hour before sunrise without lighted headlights and taillights.

§ 6295.3 Vehicle standards.

(a) No off-road vehicle may be operated on public lands unless equipped with proper brakes and muffler in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise, may be operated on public lands.

(c) The authorized officer may, by posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau of Land Management offices, indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrestor that meets and is qualified to either the U.S. Department of Agriculture—Forest Service Standard 5100–1a, or the 80 per cent efficiency level when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350, which standards include the requirement that such spark arrestor shall have an efficiency to retain or destroy at least 80 per cent of carbon particles, for all flow rates, and which includes a requirement that such spark arrestor has been warranted by its manufacturer as meeting the above-stated efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation.

Subpart 6296—Special Regulations [Reserved]

JACK O. HORTON,
Assistant Secretary of the Interior.

APRIL 3, 1974.

[FR Doc.8028 Filed 4–12–74;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2361]

PART 3100—OIL AND GAS LEASING

Subpart 3107—Continuation, Extension or Renewals

CONTINUATION OF OIL AND GAS LEASE BY DRILLING

Subpart 3107 of Chapter II is amended as follows:

§ 3107.2–1 Terms defined.

* * * * *

(b) Primary term. (1) "Primary term" of leases subject to section 4(d) of the Mineral Leasing Act Revision of 1960 (30 U.S.C. 226–1(d)) means all periods in the life of the lease prior to its extension by reason of production of oil and gas in paying quantities.

(2) "Primary term" of all other leases means the initial term as set forth in the lease. For a competitive lease issued under section 17 of the Mineral Leasing Act, as amended (30 U.S.C. 226(e)), this means five years and for a noncompetitive lease issued under that section this means ten years.

Dated: August 16, 1974.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.74–19456 Filed 8–21–74;8:45 am]

Published in 39 F.R. 30352, August 22, 1974 - Effective August 22, 1974.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2362]

PART 4110—GRAZING ADMINISTRATION

Branding and Marking of Livestock

Section 4112.3-2(a) is amended to read as follows:

§ 4112.3-2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) (1) State laws and regulations relating to sanitary and branding requirements for livestock shall be followed by graziers using the Federal range.

(2) However, the following minimum branding requirements are mandatory for livestock authorized to graze the Federal range: (i) All cattle, horses, and burros over 6 months of age must carry a brand which has been filed with the District Manager, and (ii) All sheep and goats over 6 months of age must be identified with earmarks, paint brands, or other markings filed with the District Manager. The District Manager may, for good cause, exempt certain livestock (such as show animals) from the minimum branding requirements. An alternative method of identifying the animals shall be used in such instances.

(3) To the extent that State laws and regulations are lacking or less stringent than the regulations in this paragraph, the regulations in this paragraph are minimum and controlling on the Federal range.

(4) The District Manager shall retain the discretionary authority to require eartagging and other marking of livestock in order to abate trespass and promote the orderly administration of the range.

* * * * *

JACK O. HORTON,
Assistant Secretary of the Interior.

SEPTEMBER 16, 1974.

[FR Doc.74-22266 Filed 9-24-74;8:45 am]

Published in 39 F.R. 34415, September 25, 1974 - Effective October 23, 1974.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Circular No. 2363

FILING OF ALASKA NATIVE CLAIM SETTLEMENT ACT SELECTIONS OVER NATIVE ALLOTMENT APPLICATIONS

Subchapter B (2000) of Title 43 of the Code of Federal Regulations is amended as follows:

PART 2090—SPECIAL LAWS AND RULES

1. Section 2091.1(a) is revised to read as follows:

§ 2091.1 Rejection of applications.

* * * * *

(a) Withdrawal or reservation of lands; except that this does not prevent the filing of applications by village and regional corporations under 43 CFR Parts 2561 and 2652 for public lands withdrawn under section 11(a)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601), unless the lands are withdrawn for the national park system or are withdrawn or reserved for national defense purposes.

* * * * *

2. Section 2091.9-5 is redesignated as § 2091.6-5 and revised to read:

§ 2091.6-5 Application for native allotment.

The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands will be rejected, except when the conflicting application is made for the conveyance of lands pursuant to any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.). When there is more than one Native allotment application covering the same tract of land, a determination will be made as to which applicant has fulfilled the requirements of the act and the regulations thereunder.

PART 2560—ALASKA OCCUPANCY AND USE

3. Section 2561.1(e) is revised to read:

§ 2561.1 Applications.

* * * * *

(e) The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands shall be rejected, except when the conflicting application is made for the conveyance of lands pursuant to any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

* * * * *

PART 2650—ALASKA NATIVE SELECTION

4. In § 2651.4, paragraph (h) is added to read:

§ 2651.4 Selection limitations.

* * * * *

(h) Village or regional corporations may, but are not required to, select lands within pending Native allotments. If the village or regional corporation selection omits lands within a pending Native allotment, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the pending Native allotment is finally rejected and closed, the village or regional corporation may amend its selection application to include all of the land formerly in the Native allotment application, but is not required to do so to meet the requirements for compactness and contiguity.

5. In § 2653.3, paragraph (d) is added to read:

§ 2653.3 Lands available for selection.

* * * * *

(d) Native land selections under Sec. 14(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) may, but are not required to, include within such selections land within pending Native allotment applications.

JACK O. HORTON,
Assistant Secretary of the Interior.

SEPTEMBER 18, 1974.

[FR Doc.74-22327 Filed 9-25-74;8:45 am]

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Circular Distribution List

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Circular Distribution List

Title 43—Public Lands Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2364]

PART 2820—ROADS AND HIGHWAYS

Additional Use of Highway Right-of-Way

1. Section 2821.6 is revised to read as follows:

§ 2821.6 Additional rights-of-way within highway rights-of-way.

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway right-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the Authorized Officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

2. Section 2822.1–2(b) is revised as follows:

§ 2822.1–2 Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.

* * * * *

(b) *Revocation or modification of withdrawal.* Where reserved lands are involved, no rights to establish or construct the highway may be acquired before the reservation is revoked or modified to permit construction of the highway, subject to terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve and for the protection of the natural resources and the environment.

3. Sections 2822.2, 2822.2–1, and 2822.2–2 are revised to read as follows:

§ 2822.2 Nature of interest.

§ 2822.2–1 Effective date of grant.

Grants of rights-of-way under P.S. 2477 are effective upon construction or establishment of highways in accordance with the State laws over public lands that are not reserved for public uses.

§ 2822.2–2 Extent of grant.

A right-of-way granted pursuant to R.S. 2477 confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway right-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the Authorized Officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way. Grants under R.S. 2477 are made subject to the provisions of § 2801.1–5 (b), (c), (d), (e), (i), and (k) of this chapter.

JACK O. HORTON,
Assistant Secretary of the Interior.

OCTOBER 29, 1974.

[FR Doc.74–26107 Filed 11–6–74;8:45 am]

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Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2246]

PART 2822—ROADS AND HIGHWAYS

Additional Use of Highway Right-of-Way

1. Section 2822.6 is revised to read as follows:

§ 2822.6 Additional rights-of-way within highway rights-of-way.

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway right-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the Authorized Officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

2. Section 2822.1-2(b) is revised as follows:

§ 2822.1-2 Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.

* * * * *

(b) Revocation or modification of withdrawal. Where reserved lands are involved, no rights to establish or construct the highway may be acquired before the reservation is revoked or modified to permit construction of the highway, subject to terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve and for the protection of the natural resources and the environment.

3. Sections 2822.2, 2822.2-1, and 2822.2-2 are revoked to read as follows:

§ 2822.2 Nature of interest.

§ 2822.2-1 Effective date of grant.

Grants of rights-of-way under R.S. 2477 are effective upon construction or establishment of highways in accordance with the State laws over public lands that are not reserved for public use.

§ 2822.2-2 Extent of grant.

A right-of-way granted pursuant to R.S. 2477 confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway right-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the Authorized Officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way. Grants under R.S. 2477 are made subject to the provisions of § 2821.1-6 (b), (c), (d), (e), (f), and (g) of this chapter.

JACK O. BOSTON,
Assistant Secretary
of the Interior.

October 23, 1974.

[FR Doc.74-25197 Filed 11-8-74;8:45 am]

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Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2365]

PART 4110—GRAZING ADMINISTRATION

Subpart 4115—Records and Administrative Procedures

ESTABLISHMENT OF GRAZING FEES

Paragraph (k)(1) of § 4115.2–1 Chapter II, Title 43 Code of Federal Regulations is amended as follows:

1. Subdivision (ii) is revised to read as follows:

2. Subdivision (iv) is amended by deleting the first sentence thereof and substituting the following:

§ 4115.2–1 License and permit procedures, requirements and conditions.

* * * * *

(k) * * * (1) * * *

(ii) Fees will be established by the Secretary in five annual increments, effective with the fee year beginning March 1, 1976, to attain fair market value of range forage at the 1980 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. Annual adjustments will also be made for any of the 1976–80 fee years and thereafter to reflect current market value.

* * * * *

(iv) Range improvement fees shall be at least 50 percent of the total grazing fees charged or as otherwise provided by law. Other special range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. * * *

* * * * *

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 10, 1975.

[FR Doc.75–1402 Filed 1–15–75;8:45 am]

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Circular Distribution List

Published in 40 F.R. 2812, January 16, 1975 - Effective March 1, 1975.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2366]

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Boards

PROCEDURES FOR THE OPERATION OF ADVISORY BOARDS

Group 1700 of Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

1. The heading of Part 1780 and a Subpart 1784 are added to read as follows:

Group 1700—Program Management

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Boards

Sec.
1784.0–1 Purpose.
1784.0–2 Objectives.
1784.0–3 Authority.
1784.0–4 Definitions.
1784.1 Establishment, termination, and renewal.
1784.2 Appointment of members.
1784.3 Termination of appointments.
1784.4 Operating procedures.

Subpart 1784—Advisory Boards

§ 1784.0–1 Purpose.

This subpart contains guidelines and procedures for advisory boards created to advise the Secretary of the Interior and Director, State Directors, and district Managers of the Bureau of Land Management on matters relating to the use and management of lands and resources under the administrative jurisdiction of the Bureau of Land Management.

§ 1784.0–2 Objectives.

The objective of advisory boards under these regulations is to make available to the Department of the Interior and the Bureau of Land Management expert counsel by concerned people who are knowledgeable by experience, training, or education about the use and management of lands and their natural resources and the environment.

§ 1784.0–3 Authority.

The Act of October 6, 1972 (86 Stat. 770; 5 App. I U.S.C.) authorizes the establishment of a system governing the creation, operation, and termination of advisory boards in the executive branch of the Federal Government and specifies responsibilities, policies, and procedures in the creation, management, and termination of those boards.

§ 1784.0–4 Definitions.

An "advisory board" has the same meaning as an "advisory committee" which is defined in section 3 of the Federal Advisory Committee Act.

§ 1784.1 Establishment, termination, and renewal.

(a) An advisory board not specifically authorized by statute or by the President shall become established if and when the Secretary of the Interior determines, as a matter of formal record, after consultation with the Director, Office of Management and Budget, with timely notice published in the FEDERAL REGISTER, that establishment of the board is in the public interest in connection with duties imposed on the Department of the Interior by law. No advisory board shall meet or take any action until an advisory committee charter is filed as required by the Act.

(b) (1) Each nonstatutory advisory board (i.e. not established by statute or reorganization plan) which is in existence on January 5, 1973, shall terminate no later than January 5, 1975, unless it is renewed by the Secretary of the Interior prior to January 5, 1975, in accordance with the regulations of the Office of Management and Budget. Any advisory board which is renewed shall continue for not more than two years unless, prior to the expiration of that period, it is renewed. Each such advisory board established by the Secretary of the Interior after January 5, 1973, shall terminate not later than two years after its establishment unless prior to that time it is renewed.

(2) Each advisory board established by statute or reorganization plan which is in existence on January 5, 1973, shall terminate by January 5, 1975, unless its duration is otherwise provided for by law.

(i) Each such advisory board established by statute or reorganization plan which is established after January 5, 1973, shall terminate not later than two years after its establishment unless its duration is otherwise provided for by law.

(ii) Any such statutory advisory board shall file a new charter upon the expiration of each successive two-year period following the date of enactment of the statute establishing the board.

§ 1784.2 Appointment of members.

(a) The membership of the advisory board shall be fairly balanced in terms of points of view represented and the functions to be performed by the advisory board. To be qualified for appointment to an advisory board, a person must be capable, through education, training, or experience, to give informed advice as to a specified industry, service, or discipline. To assure that the advice and recommendations of the advisory board will not be inappropriately influenced, a person will not be qualified as an advisor with respect to an industry, service, or discipline if, in the judgment of the appointing officer, he has substantial relationship to a conflicting or competing industry, service, or discipline.

(b) Appointments to an advisory board will terminate 365 days from and after the beginning of appointment, unless a shorter period is specified in the appointing document. An individual may serve on any one advisory board for not more than a total of 10 years. Exceptions will be made only on demonstration to the Secretary or his delegate that longer service will yield substantially more benefits to the public interest than appointment of another individual.

Published in 40 F.R. 3294, January 21, 1975 - Effective February 24, 1975.

Circular Distribution List

(c) For purposes of compensation, members of advisory boards are considered nonsalaried employees of the Bureau of Land Management. While on advisory board business, they will receive reimbursement for travel costs and per diem as authorized by section 5703 of Title 5, United States Code.

(d) Minorities and women are to be given every opportunity and consideration for appointment to an advisory board. No person is to be denied an opportunity to serve on any board or committee because of race, sex, religion, national origin or age.

§ 1784.3 Termination of appointments.

(a) The Secretary or his authorized representative may, after due notice, terminate the services of an advisor if the person: (1) no longer meets the criteria or requirements under which appointed, or (2) fails to or is unable to serve, or (3) in the opinion of the Secretary or his authorized representative should be removed in the public interest.

§ 1784.4 Operating procedures.

(a) Unless otherwise provided for by statute, all activities of advisory boards chartered under the regulations of this subpart shall conform to the committee management requirements set forth in Part 308 of the Department of the Interior Manual which incorporates the requirements of relevant statutes, executive orders, and executive agency directives.

(b) The function of advisory boards is solely advisory to the official or officials to whom they report. Members of advisory boards may not act individually or collectively as advisory board members in any other capacity. Additionally, no board member may offer advice or make recommendations on any matter before a board if he has a financial or other interest in such matter. Membership on advisory boards, however, shall not diminish the exercise of rights of members as private individuals or members of other organizations or offices. Determinations of action to be taken on advisory board reports and recommendations shall be made solely by the Secretary of the Interior or his delegate.

(c) Advisory board meetings shall be held only at the call of the Secretary of the Interior or his authorized representative after at least 15-day published notice in the FEDERAL REGISTER. The authorized representative of the Secretary shall give such advance notice of time, place, and general subject matter of scheduled meetings as, in his judgment, will provide interested parties adequate opportunity to participate in or attend the meeting. The time and place of meetings shall be scheduled with the objective of permitting such participation or attendance. The authorized representative may adjourn a meeting at any time if he determines it to be in the public interest for any reason including, but not limited to, any instance where continuance of the meeting would be inconsistent (1) with governing laws, rules, or regulations, or (2) with the purpose for which the board convened. All meetings shall be held in the presence of an authorized representative of the Secretary. Each meeting shall be conducted in accordance with an agenda approved by the Secretary or his authorized representative prior to the meeting. All meetings of advisory boards shall be open to the public. Interested persons may attend, appear before, or file statements with any advisory board. The number of observers or participants at any advisory board meeting may be limited to the extent that available accommodations and time require limitation.

(d) Detailed minutes shall be kept of each advisory board meeting. The minutes shall include: the time and place of the meeting; a list of advisory board members and staff and agency employees present at the meeting; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the advisory board; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the meeting. The chairman of the advisory board shall certify to the accuracy of the minutes.

(e) Subject to section 552 of Title 5, U.S.C., the records, reports, studies, working papers, or other documents which were made available to or prepared for or by an advisory board shall be available for public inspection and copying in the office of the authorized officer responsible for support services for that board under the regulations in this subpart until the advisory board ceases to exist. Departmental rules issued pursuant to the Freedom of Information Act (5 U.S.C. 552) and contained in Part 2 of this title apply to such documents.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 14, 1975.

[FR Doc.75-1809 Filed 1-20-75;8:45 am]

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2367]

PART 3100—OIL AND GAS LEASING

Subpart 3107—Continuation, Extension or Renewals

CONTINUATION OF OIL AND GAS LEASE BY DRILLING

Paragraph (b) of § 3107.2–1 is revised as follows:

§ 3107.2–1 Terms defined.

* * * * *

(b) Primary term. (1) "Primary term" of leases subject to section 4(d) of the Mineral Leasing Act Revision of 1960 (30 U.S.C. 226–1(d)) means all periods in the life of the lease prior to its extension by reason of production of oil and gas in paying quantities.

(2) "Primary term" of all other leases means the initial term as set forth in the lease. For a competitive lease issued under section 17 of the Mineral Leasing Act, as amended (30 U.S.C. 226(e)), this means five years and for a noncompetitive lease issued under that section this means ten years.

Dated: March 12, 1975.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.75–7162 Filed 3–18–75;8:45 am]

Published in 40 F.R. 12507, March 19, 1975 - Effective March 31, 1975.

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CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2368]

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2802—Procedures

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Subchapter B of Chapter II is amended as follows:

1. Section 2802.1–2 is revised to read as follows:

§ 2802.1–2 Reimbursement of costs.

(a) (1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321–4347), before the right-of-way or permit will be issued under the regulations of this part.

(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public, except as to rights-of-way or permits under section 28 of the Mineral Leasing Act of 1920, as amended (87 Stat. 576); (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies.

(3) An applicant must submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear facilities)

Length	*Payments*
Less than 5 miles	$50 per mile or fraction thereof.
5 to 20 miles	$500.
20 miles and over	$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$250 for each 40 acres or fraction thereof.

(iii) If a project has the features of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a) (3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a) (8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a) (3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a) (3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a) (4) and (b) (3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States according to subparagraphs (3) through (7) of this paragraph, except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit, or other means acceptable to the authorized officer, for costs under § 2802.1–2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under § 2802.1–2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under § 2802.1–2.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2802.1–2 for the entire system; subject, however, to the provisions of subpara-

Published in 40 F.R. 17841, April 23, 1975 - Effective June 1, 1975.

Circular Distribution List

graphs (11) through (13) of this paragraph.

(15) The regulations contained in § 2802.1–2 are applicable to all applications for rights-of-way or permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b) (1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length	*Payment*
Less than 5 miles	$20 per mile or fraction thereof.
5 to 20 miles	$200.
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b) (2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a) (8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

2. Sections 2802.2, 2802.2–2 are revised to read as follows:

§ 2802.2 Application and use procedure.

§ 2802.2–1 Incomplete application and reports.

(a) Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

(b) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the authorized officer is required to consult with and obtain the consent of such other agency before the application may be granted.

§ 2802.2–2 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence toward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

3. A new § 2808.2–4 is added to read:

§ 2802.2–4 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with § 2802.1 wherein the authorized officer's judgment the deviation is substantial.

4. Section 2802.4 is revised to read as follows:

§ 2802.4 Transfer of right-of-way.

§ 2802.4–1 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a right-of-way or permit incident to a right-of-way acquired under any law, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in accordance with § 2802.1 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of an applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

§ 2802.4–2 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by § 2802.1–2(a) (4), must be accompanied by a nonrefundable payment of $25.

ROLAND G. ROBISON, Jr.,
Deputy Assistant Secretary of the Interior.

APRIL 18, 1975.

[FR Doc.75–10554 Filed 4–22–75;8:45 am]

GPO 859 – 839

Title 32—National Defense

TER VII—DEPARTMENT OF THE AIR FORCE

BCHAPTER A—ADMINISTRATION

T 806—DISCLOSURE OF AIR CE RECORDS

Im entation; Correction

document revising 32 CFR Part lished in the FEDERAL REGISTER on y 24, 1975, at 40 FR 7901, is cor- as follows:

[Amended]

tion 806.26(b) is corrected by g "§ 806.31 (b) and (c)" to read (b) and § 806.33(a)(3)".

[Amended]

tion 806.29 is corrected by "Primary accident/incident tions (excludes ground/explo- dents)." to read "Primary acci- ident investigation including xplosive accidents." and by "AFR 111-2" to read "AFM

and 806.57 [Amended]

on 806.33(a)(3) and § 806.57(d) cted by adding the word "public" olidays".

ion 806.57(d)(2) is corrected ing "OASF" to read "OSAF".

JAMES E. DAGWELL,
ief Documentation Manage- ent Branch, Directorate of dministration.

7 Filed 4-22-75;8:45 am]

—Protection of Environment

TER I—ENVIRONMENTAL PROTECTION AGENCY

PTER E—PESTICIDE PROGRAMS

RL362-3;PP2F1229/R24]

—TOLERANCES AND EXEMP- ROM TOLERANCES FOR PESTI- EMICALS IN OR ON RAW AGRI- AL COMMODITIES

Carbaryl

uary 2, 1972, notice was given 6) that Union Carbide Corp., ylvania Ave. NW., Washing- 0006, had filed a petition (PP r a pesticide tolerance with nmental Protection Agency is petition proposed the es- t of tolerances for negligible the insecticide carbaryl (1- -methylcarbamate) and its product 1-naphthol, calcu- baryl, in or on the raw agri- nmodity potatoes at 0.5 part

An interim tolerance of 0.5 lion for residues of carbaryl tatoes has been established Union Carbide Corp., sub- the petition by re- per million.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. There is no reasonable expectation of residues in eggs, meat, milk, or poultry from the proposed use and § 180.6(a)(3) applies. The tolerance established by amending § 180.169 will protect the public health.

Any person adversely affected by this regulation may on or before June 23, 1975, file written objections with the Hearing Clerk, Environmental Protection Agency, 401 M Street SW., East Tower, Room 1019, Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on April 23, 1975, Part 180, Subpart C, is amended by revising §§ 180.169 and 180.319.

(Sec. 408(d)(2), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2)))

Dated: April 17, 1975.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticide Programs.

Part 180, § 180.169, is amended by inserting the new paragraph "0.2 part per million * * *" after the paragraph "1 part per million * * *" to read as follows.

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

0.2 part per million (negligible residue) in or on potatoes.

* * * * *

Part 180, § 180.319, is amended by deleting the raw agricultural commodity potatoes from the item "Carbaryl * * *" in the table to read as follows.

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
* * *	* * *	* * *	* * *
Carbaryl (1-naphthyl N-methylcarbamate) insecticide and its metabolite 1-naphthol, calculated as carbaryl.	----------	0.5	Eggs:
* * *	* * *	* * *	* * *

* * * * *

[FR Doc.75-10503 Filed 4-22-75;8:45 am]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Formaldehyde

Correction

In FR Doc. 75-273 appearing at page 1042 in the issue of Monday, January 6, 1975, the fifth line of § 180.1023 in the third column of page 1042 should read as follows: "grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, tim-"

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2368]

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2802—Procedures

REIMBURSEMENT OF COSTS

On pages 31906 and 31907 of the FEDERAL REGISTER of September 3, 1974, there was published a notice and text of a proposed amendment to Part 2800 of Title 43, Code of Federal Regulations. The primary purpose of this amendment is to provide for the recovery of costs incurred by the United States in processing applications for rights-of-way and permits incident to rights-of-way across the public lands. In accordance with the policy expressed in Title V of the Independent Offices Act of 1952 (31 U.S.C. 483a); authority contained in sections 201 and 204 of the Public Land Administration Act (43 U.S.C. 1371, 1374); and the requirements of section 28(1) of the 1973 amendments to the Mineral Leasing Act (87 Stat. 576, 579), as to oil, gas and other pipelines, an applicant for a right-of-way or permit incident thereto under Part 2800 of Title 43, Code of Federal Regulations, will be required to reimburse the United States for the cost of processing the application, including preparation of reports and statements concerning the impact of the proposal upon the environment. Following the issuance of a right-of-way or permit, the holder thereof would be required to reimburse the United States for costs incurred by the United States in monitoring construction, operation, maintenance and termination of authorized facilities, and in the protection and rehabilitation of the land involved.

Interested persons were given until October 18, 1974, to submit comments, suggestions, or objection to the proposed amendment. Fifty-one comments were received and considered in the final rulemaking process.

Most commenters objected to the proposal stating that the cost of processing

United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a)(3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a)(3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a)(3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each applicant will reimburse the United States according to subparagraphs (3) through (7) of this paragraph, except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit, or other means acceptable to the authorized officer, for costs under § 2802.1-2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under § 2802.1-2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under § 2802.1-2.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2802.1-2 for the entire system; subject, however, to the provisions of subparagraphs (11) through (13) of this paragraph.

(15) The regulations contained in § 2802.1-2 are applicable to all applications for rights-of-way or permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length	*Payment*
Less than 5 miles	$20 per mile or fraction thereof.
5 to 20 miles	$200.
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b)(2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b)(2) and (3) of this section.

2. Sections 2802.2, 2802.2-2 are revised to read as follows:

§ 2802.2 Application and use procedure.

§ 2802.2-1 Incomplete application and reports.

(a) Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

(b) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the authorized officer is required to consult with and obtain the consent of such other agency before the application may be granted.

§ 2802.2-2 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence

ward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

3. A new § 2808.2–4 is added to read:

§ 2802.2–4 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with § 2802.1 wherein the authorized officer's judgment the deviation is substantial.

4. Section 2802.4 is revised to read as follows:

§ 2802.4 Transfer of right-of-way.

§ 2802.4–1 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a right-of-way or permit incident to a right-of-way acquired under any law, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in accordance with § 2802.1 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of an applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

§ 2802.4–2 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by § 2802.1–2(a)(4), must be accompanied by a nonrefundable payment of $25.

ROLAND G. ROBISON, Jr.,
Deputy Assistant Secretary of the Interior.

APRIL 18, 1975.

[FR Doc.75–10554 Filed 4–22–75;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 192—STATE STUDENT INCENTIVE GRANT PROGRAM

Continuing Grants

On page 43729 of the FEDERAL REGISTER of December 18, 1974, there was published a notice of proposed rulemaking to amend regulations governing the operation of the State Student Incentive Grant (SSIG) Program, which makes available to the States incentive grants to assist them in providing awards to eligible undergraduate students with substantial financial need, thus enabling students to attend or continue to attend institutions of higher education. The law includes separate authorizations for initial and continuation awards to such students and the proposed regulatory amendments dealt primarily with the allotment of funds among the States for continuation grants to students.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendments to the regulations. Several comments were received regarding the proposed rule, mainly from State scholarship association officials and individual State scholarship agency officials. The Office of Education's response is set forth following the summary of each comment.

Section 192.3(e) *Allotment of funds for continuation awards.—Comment.* One commenter proposed that the States be allowed complete discretion to transfer the funds received under their allotment between initial and continuation awards, thereby enabling them to make initial and continuation awards based on the particular needs of each State.

Another commenter suggested that once a student receives an award through the SSIG program he should continue to receive the award until he completes his undergraduate course of study, as long as he continues to remain eligible for such a grant, and that, accordingly, States should be encouraged to use their allotments to give priority to continuation awards and to use the excess funds to grant initial awards.

Response. Section 415B of the Higher Education Act of 1965 (20 U.S.C. 1070c–1) authorizes separate appropriations for initial and for continuation awards. Further, it provides an allotment formula for distributing initial award funds among the States and for a reallotment of funds appropriated for initial awards if a State cannot use all the money it receives under the formula for initial awards. The Commissioner may allot continuation awards funds among the States in such manner as he determines will best achieve the purposes for which such sums were appropriated. If Congress appropriates funds separately for initial and for continuation awards, giving States discretion to transfer such funds between initial and continuing awards would not be permissible.

It should be noted, however, that for Fiscal Year 1975 Congress did not provide individual appropriations for initial and continuing awards, but appropriated money for the SSIG program in one lump sum. Consequently, the Commissioner has proposed in a notice of proposed rulemaking published in the FEDERAL REGISTER of March 10, 1975, that Fiscal Year 1975 funds appropriated for use in academic year 1975–76 be allotted among the States in accordance with the statutory formula for initial awards but that each State have the authority to determine the amount of its allotment which will be used for continuation and for initial awards.

With regard to the question of priority, the Commissioner recognizes that students who have received initial awards for the current academic year may reasonably expect continued financial support and that, where possible, priority should therefore be given for continuation awards. In the case of the Fiscal Year 1975 appropriation, however, he also believes that the States can and should be given the flexibility to make judgments regarding the students' relative access to the various forms of financial assistance which might be available.

Section 192.6 *Eligible students—Comment.* One commenter suggested that students enrolled in cooperative education programs at institutions of higher education be permitted to participate in the SSIG program.

Response. Students who are enrolled in cooperative education programs at institutions of higher education, who are otherwise eligible to participate in the SSIG program by satisfying the requirements of § 192.6, do not lose their eligibility to participate in the program by being so enrolled. However, a State would determine in accordance with § 192.7 that a student receiving pay for the work portion of the cooperative education program does not have substantial financial need.

Effective date. The notice of proposed rulemaking was transmitted to Congress on December 12, 1974, pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein for Congressional action has expired without such action having taken place. Therefore, regulations set forth below shall become effective on April 23, 1975: *Provided, however,* That should the proposed regulations published on March 10, 1975, become final, §§ 192.3 (e) and (f) of this amendment would become effective with regard to funds appropriated for Fiscal Year 1976 and used by States during academic year 1976–1977.

(Catalog of Federal Domestic Assistance No. 13.548: State Student Incentive Grant Program)

Dated: March 21, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: April 15, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Part 192 of Chapter I of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 192.2, the definition of "clock hour" is amended to read as follows:

§ 192.2 Definitions.

* * * * *

"Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.

* * * * *

2. Section 192.3 is amended by adding paragraphs (e) and (f) to read as follows:

§ 192.3 Allotment and reallotment.

* * * * *

(e) *Allotment of funds*

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2369]

PART 2920—SPECIAL LAND USE PERMITS

Subpart 2920—Principles and Procedures, General

REVISED PROCEDURES FOR ISSUING PERMITS FOR CERTAIN USES

Subpart 2920 of Chapter II is amended as follows:

1. Section 2920.2 is revised to read as follows:

§ 2920.2 Fees.

Each application for a special land-use permit or a renewal thereof, except those under § 2920.7 for which no service charge is required, must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

2. Paragraph 2920.3(a)(1) is revised to read as follows:

§ 2920.3 Terms.

(a) *General.* (1) A special land-use permit is revocable in the discretion of the authorized officer at any time upon notice to the permittee.

* * * * *

3. Paragraph 2920.4(a) is revised to read as follows:

§ 2920.4 Rental charges.

(a) Except as to permits issued under § 2920.7, for which no rentals are required, each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise; he may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

* * * * *

4. A new § 2920.7 is added to read as follows:

§ 2920.7 Short form.

The authorized officer may issue a short form special land use permit for temporary use of the public lands not to exceed 90 days where the proposed use of these lands does not involve construction or the erection of improvements or structures, and in the opinion of the authorized officer will not alter the character of the land or its resources.

Dated: May 27, 1975.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.75-14382 Filed 5-29-75;10:51 am]

Published in 40 F.R. 23472, May 30, 1975 - Effective July 1, 1975.

Circular Distribution List

GPO 830-079

Circular No. 2370

Regulations Pertaining To:

OUTDOOR RECREATION AND RECREATION MANAGEMENT

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of June 6, 1975

PART 6000—OUTDOOR RECREATION; GENERAL

Sec.
6000.0–1 Purpose.
6000.0–2 Objective.
6000.0–4 Responsibility.
6000.0–6 Management policy.

AUTHORITY: The provisions of this Part 6000 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6000.0–1 Purpose.

The lands administered by the Bureau of Land Management are used and managed for a variety of purposes which are described in Subpart 1725 of this chapter. The regulations in this subchapter relate to the use and development of these lands for outdoors recreation purposes. The regulations also identify circumstances under which use of such lands may be restricted in order to protect the public health and safety, and natural resources and values.

§ 6000.0–2 Objective.

The Bureau shall manage lands to promote public use and enjoyment of the lands for outdoor recreation use in a manner which will protect the health, safety, and comfort of the public and preserve and protect natural resources and values.

§ 6000.0–4 Responsibility.

(a) Except where specified to the contrary, the authority of the Secretary of the Interior to develop, manage, authorize the use, and stipulate the terms and conditions of such use of lands, and make other determinations in accordance with the regulations of this part has been delegated to authorized officers of the Bureau of Land Management.

(b) The using public has the responsibility to use the lands in a manner which will permit maximum use and enjoyment by all, and will protect and preserve the lands, their resources, and any public recreation facility or value which is added thereon.

§ 6000.0–6 Management policy.

(a) Subpart 1725 of this chapter describes the program and multiple-use management policy for public lands, including the development of recreational resources, consistent with the economic and effective development and management of public lands, for use by the public.

(b) Encouragement will be given to State and local governments and private agencies to develop additional public recreation facilities when such development is consistent with long-range management plans and programs of the Bureau.

(c) Priority will be given to:

(1) Recreation development and enhancement as follows:

(i) Undeveloped sites currently under heavy, uncontrolled use that threatens public health and safety or damage to the recreation resource.

(ii) Areas in localities where public recreational demand exceeds available opportunities and facilities.

(iii) Areas adjacent to heavily traveled routes or highways near urban areas, bodies of water, and unique scenic attractions.

(2) Preservation and protection of natural and cultral resources, including but not limited to scientific, scenic, historic, and archeological values, and primitive environments.

(d) Reasonable fees in accordance with Part 18 of this title may be established and collected by the authorized officer.

PART 6010—GENERAL PROGRAM

Sec.
6010.1 Identification of lands.
6010.2 Rules of conduct.
6010.3 Supplemental rules.
6010.4 Closure of lands.
6010.5 State and local laws.

AUTHORITY: The provisions of this Part 6010 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6010.1 Identification of lands.

To assist the public in the identification of lands, the Bureau shall, where feasible, post signs, publish ownership maps, and otherwise identify public recreation opportunities.

§ 6010.2 Rules of conduct.

(a) *Permitted activities.*—(1) *Collecting—hobby specimens.* Flowers, berries, nuts, seeds, cones, leaves, and similar renewable resources and nonrenewable resources such as rocks, mineral specimens, common invertebrate fossils, and gem stones may be collected in reasonable quantities for personal use, consumption, or hobby collecting. Limitations on this privilege are contained in paragraph (b) of this section.

(2) *Collecting—for sale or barter.* Gathering or collecting of renewable or nonrenewable resources for the purpose of sale or barter may be done only where specifically authorized by law.

(3) *Petrified wood.* For regulations pertaining to collection of petrified wood see Subpart 3612 of this chapter.

(4) *Vegetative and mineral materials.* For regulations pertaining to removal of vegetative and mineral materials under the Mineral Material Sales Act, see Subparts 3610, 3611, and 5400 of these regulations.

(b) *Prohibited activities.* In the use of lands for public outdoor recreation purposes, no one shall:

(1) Intentionally or wantonly destroy, deface, injure, remove or disturb any public building, sign, equipment, marker, or other public property.

(2) Harvest or remove any vegetative or mineral resources or object of antiquity, historic, or scientific interest unless such removal is in accordance with Part 3 of this title regulations or paragraph (a) of this section, or is otherwise authorized by law.

(3) Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property.

(4) Dig, remove, or destroy any tree or shrub.

(5) Gather or collect renewable or nonrenewable resources for the purpose of sale or barter unless specifically permitted or authorized by law.

(6) Drive or operate motorized vehicles or otherwise conduct himself in a manner that may result in unnecessary frightening or chasing of people or domestic livestock and wildlife.

(7) Use motorized mechanical devices for digging, scraping, or trenching for purposes of collecting.

§ 6010.3 Supplemental rules.

Additional rules to protect the public health and safety and protect resources may be established by the authorized officer, as necessary. They shall be posted in appropriate locations to notify the public of requirements for the occupancy and use of lands, outdoor recreation facilities, and roads and trails. The posted rules may provide for, but need not be limited to, protection of public health and safety, protection of the lands from fires, prevention of soil erosion, and utilization and protection of outdoor recreation and other resource values of the Federal lands.

§ 6010.4 Closure of lands.

In the management of lands to protect the public and assure proper resource utilization, conservation, and protection, public use and travel may be temporarily restricted. For instance, areas may be closed during periods of high fire danger or unsafe conditions, or where use will interfere with or delay mineral development, timber, and livestock operations, or other authorized use of the lands. Areas may also be closed temporarily to:

(a) Protect the public health and safety.

(b) Prevent excessive erosion.

(c) Prevent unnecessary destruction of plant life and wildlife habitat.

(d) Protect the natural environment.

(e) Preserve areas having cultural or historical value.

(f) Protect scientific studies or preserve scientific values.

§ 6010.5 State and local laws.

Except as otherwise provided by law, State and local laws and ordinances shall apply. This refers, but is not limited, to laws and ordinances governing:

(a) Operation and use of motor vehicles, aircraft, and boats.

(b) Hunting and fishing.

(c) Use of firearms.

(d) Injury to persons or destruction of property.

(e) Air and water pollution.

(f) Littering.

(g) Sanitation.

(h) Use of fire.

Group 6200—Recreation Management

PART 6200—GENERAL

Sec.
6200.0–1 Purpose.
6200.0–6 Policy.

AUTHORITY: The provisions of this Part 6200 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6200.0–1 Purpose.

This group defines outdoor recreation regulations dealing with the administration of lands for specific types of public use, resource conditions, outdoor recreation occupancy and use, and resource development.

§ 6200.0–6 Policy.

Where appropriate for management and public identification purposes, lands having significant natural values may be (a) designated pursuant to the provisions of 2070 of this chapter, and (b) segregated pursuant to the provisions of Part 2440 of this chapter.

PART 6220—PROTECTION AND PRESERVATION OF NATURAL VALUES

Sec.
6220.0–1 Purpose.

Subpart 6221—Primitive Areas

6221.0–1 Purpose.
6221.0–2 Objective.
6221.1 Characteristics.
6221.2 Criteria for use.

Subpart 6222—Scenic Corridor-Buffer Zones

6222.0–6 Policy.

Subpart 6223—Wild and Scenic Rivers

6223.0–1 Purpose.
6223.0–2 Objectives.
6223.0–3 Authority.
6223.0–6 Policy.

Subpart 6225—Natural Areas

6225.0–1 Purpose.
6225.0–2 Objectives.
6225.0–5 Definition.
6225.0–6 Policy.
6225.1 Use of natural areas.

AUTHORITY: The provisions of this Part 6220 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6220.0–1 Purpose.

This part provides guidelines for the management; and criteria for the use, of lands to preserve, protect, and enhance areas of scenic splendor, natural wonder, scientific interest, primitive environment, and other natural values for the enjoyment and use of present and future generations.

Subpart 6221—Primitive Areas

§ 6221.0–1 Purpose.

This subpart provides procedures and guidelines for the protection and recreation use of lands that have been determined to be primitive in character.

§ 6221.0–2 Objective.

Lands designated as primitive areas shall be administered for public recreational use in a manner to protect primitive values, and to:

(a) Allow the free operation of natural ecological succession to the extent feasible for scientific and other study.

(b) Preserve solitude, physical and mental challenge, inspiration and primitive recreation values.

(c) Preserve public values that would be lost if the lands were developed for commercial purposes or passed from Federal ownership.

(d) Allow the natural restoration of the primitive character of the lands.

§ 6221.1 Characteristics.

Natural, wild, and undeveloped lands in settings essentially removed from the effects of civilization are appropriate for designation as primitive areas. Essential characteristics are a natural environment that can be conserved and on which there is no undue disturbance by roads and commercial uses. Primitive areas may be representative of natural environments ranging from the southwest desert to the arctic tundra.

§ 6221.2 Criteria for use.

(a) Public use of primitive areas for recreation purposes is encouraged to the optimum extent consistent with the maintenance of the primitive environment.

(b) Travel in primitive areas is restricted to nonmechanized forms of locomotion.

(c) Construction will not be allowed in or on the land except in connection with authorized nonrecreation uses of the lands, and as necessary to meet requirements for the protection and administration of the area (including measures required in emergencies involving the health and safety of persons within the area).

(d) Roads, mechanized equipment, commercial timber harvesting, nontransient occupancy, and the landing of aircraft is prohibited except in connection with activities necessary in the use of the lands for authorized nonrecreation purposes, and then only under conditions specified by the authorized officer.

(e) Grazing of domestic livestock, water storage projects, and rights-of-way for utility lines and other purposes may be permitted by the authorized officer under such conditions and restrictions as he deems necessary to preserve primitive values.

Subpart 6222—Scenic Corridor—Buffer Zones

§ 6222.0–6 Policy.

Scenic corridors may be established along roads and highways, rivers and streams, trails and other lands for the preservation, protection and enhancement of scenic and natural values. Size and use of scenic corridors shall be consistent with the purposes for which they are established.

Subpart 6223—Wild and Scenic Rivers

§ 6223.0–1 Purpose.

To provide guidelines for management of lands affected by the Wild and Scenic Rivers Act.

§ 6223.0–2 Objectives.

To assure that all lands affected by the Wild and Scenic Rivers Act are managed in a manner consistent with the purposes of the act.

§ 6223.0–3 Authority.

(a) The Wild and Scenic Rivers Act (82 Stat. 906) provides that certain selected rivers which, with their immediate environment, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

§ 6223.0–6 Policy.

Lands affected by the Wild and Scenic Rivers Act will be identified as soon as possible and will be managed in such a manner as to preserve that characteristic of the area that led to its designation under the act.

Subpart 6225—Natural Areas

§ 6225.0–1 Purpose.

To describe procedures for management, protection and recreation use of lands having unusual natural characteristics.

§ 6225.0–2 Objectives.

To provide guidelines for the outdoor recreation use of natural areas.

§ 6225.0–5 Definition.

The following types of areas may be established under the regulations of this subpart:

(a) *Research natural areas.* These are established and maintained for the primary purpose of research and education. Scientists and educators are encouraged to use research natural areas in a manner that is nondestructive and consistent with the purpose for which the area is established. The general public may be excluded or restricted where necessary to protect studies or preserve research natural areas. Lands having the following characteristics may qualify:

(1) Typical or unusual faunistic or floristic types, associations, or other biotic phenomena, or

(2) Characteristic or outstanding geologic, pedologic, or aquatic features or processes.

(b) *Outstanding natural areas.* These are established to preserve scenic values and areas of natural wonder. The preservation of these resources in their natural condition is the primary management objective. Access roads, parking areas and public use facilities are normally located on the periphery of the area. The public is encouraged to walk

into the area for recreation purposes wherever feasible.

§ 6225.0–6 Policy.

Where appropriate the Bureau shall establish and record areas of sufficient number and size to provide adequately for scientific study, research, recreational use and demonstration purposes. These will include:

(a) The preservation of scenic values, natural wonders and examples of significant natural exosystems.

(b) Research and educational areas for scientists to study the ecology, successional trends, and other aspects of the natural environment.

(c) Preserves for rare and endangered species of plants and animals.

§ 6225.1 Use of natural areas.

No person shall use, occupy, construct or maintain improvements in natural areas in a manner inconsistent with the purpose for which the area is established; nor shall he use, occupy, construct or maintain improvements unless permitted by law or authorized by the regulations of this subpart.

PART 6250—RECREATION ACCESS

Sec.
6250.0–1 Purpose.
6250.0–2 Objective.
6250.0–6 Policy.
6250.1 Use of trails.
6250.1–1 Hiking and horse riding trails.
6250.1–2 Motor trails.

AUTHORITY: The provisions of this Part 6250 issued under 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

§ 6250.0–1 Purpose.

To provide guidelines for provision of access to and limitations on travel across lands.

§ 6250.0–2 Objective.

To assure that persons wishing to use lands have access to them and that outdoor recreation use does not damage the resources.

§ 6250.0–6 Policy.

(a) In cooperation with State and local governments and private individuals and associations, the Bureau will endeavor to provide access for public use and enjoyment of lands with outdoor recreation values.

(b) Roads and trails constructed by the Bureau shall normally be available for public access to the lands. However, lands and roads and trails may be restricted to specified authorized use or no use in the interest of public health and safety or preservation and protection of the lands.

(c) The Bureau shall, where feasible, locate, identify, construct, and maintain hiking, horse riding and motor trails, and shall post appropriate signs or markers and use other means to make the existence of such routes known to the general public.

§ 6250.1 Use of trails.

§ 6250.1–1 Hiking and horse riding trails.

Motorcycles and other motor vehicles are prohibited on trails limited to hiking and horse riding.

§ 6250.1–2 Motor trails.

(a) Motor vehicles shall remain on established routes or trails.

(b) Drivers of motor vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains and horse-drawn vehicles.

PART 6260—VISITOR MANAGEMENT

Subpart 6261—Rules for Visitor Use of Developed Recreation Sites

Sec.
6261.0–1 Purpose.
6261.0–2 Objective.
6261.0–6 Compliance.
6261.1 Sanitation.
6261.2 Audio devices.
6261.3 Occupancy and use.
6261.4 Vehicles.
6261.5 Public health, safety and comfort.
6261.6 Public property and resources.

AUTHORITY: The provisions of this Part 6260 issued under secs. 1, 3, 5, 50 Stat. 874, 875; 43 U.S.C. 1181a, 1181c, 1181e; R.S. 2478; 43 U.S.C. 1201.

Subpart 6261—Rules for Visitor Use of Developed Recreation Sites

§ 6261.0–1 Purpose.

The rules of this subpart are designed for the comfort and well-being of the public in its use of developed outdoor recreation sites and outdoor recreation facilities provided by the Bureau.

§ 6261.0–2 Objective.

To promote orderly occupancy and use of developed recreation sites, and other locations where the Bureau has installed outdoor recreation facilities for public use.

§ 6261.0–6 Compliance.

Rules for public use and occupancy of developed recreation sites, and other locations where the Bureau has installed outdoor recreation facilities, will be posted in conspicuous locations. Failure to comply with rules so posted may result in denial of the use of developed recreation sites and facilities and such other further action as may be required.

§ 6261.1 Sanitation.

All persons shall:

(a) Dispose of all garbage, paper, cans, bottles, waste materials, and rubbish by burning in authorized fires, removal from the site, or by disposal at places which may be provided for such purpose.

(b) Drain or dump refuse or waste from any trailer or other vehicle only in places or receptacles provided for such use.

(c) Refrain from cleaning fish or food or washing clothing or articles of household use at hydrants or at water faucets located in restrooms.

(d) Avoid polluting or contaminating water supplies or water used for human consumption.

(e) Deposit any body waste only into toilet receptacles provided for that purpose. Deposit of any bottles, cans, cloths, rags, metal, wood, stone or other damaging substance in any of the receptacles in toilet structures is prohibited.

(f) Use refuse containers or other refuse facilities only for the purposes for which they are supplied. The dumping of household or commercial garbage or trash brought from private property is prohibited.

§ 6261.2 Audio devices.

The following acts are prohibited in developed recreation sites:

(a) Operating or using any audio devices, including radio, television, and musical instruments, and other noise-producing devices, such as electrical generator plants and equipment driven by motors or engines, in a manner to annoy other persons.

(b) Operating or using public address systems, whether fixed, portable, or vehicle mounted unless approved by the authorized officer.

(c) Installing aerial or other special radiotelephone or television equipment unless approved by the authorized officer.

§ 6261.3 Occupancy and use.

The following rules apply to the occupancy and use of developed camping and picnicking facilities on the public lands. As a condition to such occupancy and use, the user shall:

(a) Pitch tents or park trailers or place other camping equipment only in places provided for such purposes.

(b) Camp within a campground no longer than the period of time established by the authorized officer.

(c) Attend camping equipment within prescribed time limits. Camping equipment which is unattended for more than posted limits, without permission of the authorized officer, is subject to disposition under State and local laws.

(d) Before departure remove equipment and clean any rubbish from the place occupied for recreation purposes.

(e) Build fires only in stoves, grills, fireplaces, or fire rings provided for such purposes.

(f) Camp overnight only in places provided or posted for such purposes.

(g) Maintain reasonable quiet in campgrounds between evening and morning hours as posted.

(h) Enter or remain in campgrounds closed during established night periods only as an occupant, or to visit persons occupying the campground for camping purposes.

(i) Not enter or use a site or a portion of a site closed to public use.

§ 6261.4 Vehicles.

The following rules apply to driving and operation of motor vehicles in developed recreation sites in the interest of public safety and comfort.

Motor vehicles and trailers shall not be:

(a) Driven or operated in excess of posted speeds.

(b) Driven or parked except on roads and places provided for this purpose.

(c) Driven or operated in willful disregard of the rights or safety of others or without due caution and at a speed, or in a manner, so as to endanger, or be likely to endanger, any person or property.

(d) Driven or operated on trails within developed recreation sites, except for purposes of maintaining such sites and facilities.

(e) Driven or operated in developed recreation sites, for any purpose other than access to or from the site.

(f) Driven or operated in developed recreation sites closed to such entrance by the authorized officer.

(g) Driven or operated at any time without a muffler in working order, or in such a manner as to create excessive or unusual noise or annoying smoke or dust, or using a muffler cutoff, bypass, or similar device.

(h) Unnecessarily accelerated when not moving or approaching or leaving a stopping place.

§ 6261.5 Public health, safety and comfort.

The following rules are adopted to further the public health, safety and comfort in the use and occupancy of developed recreation sites and facilities. The user shall not:

(a) Discharge firearms, firecrackers, rockets, or other fireworks in developed recreation sites.

(b) Be accompanied by a dog, cat, or other animal unless it is crated, caged, leashed, or otherwise under physical restrictive control at all times.

(c) Bring animals, other than Seeing Eye dogs, to swimming areas.

(d) Bring saddle, pack, or draft animals into any developed recreation site except where specifically permitted or authorized.

§ 6261.6 Public property and resources.

The following rules are adopted to protect public property and to preserve the resources in developed recreation sites for public use and enjoyment. The user shall not:

(a) Intentionally or wantonly destroy, deface, or remove any natural feature or plant.

(b) Intentionally or wantonly destroy, injure, deface, remove, or disturb in any manner any public building, sign, equipment, marker, or other structure or property.

PART 6270—RECREATION DEVELOPMENT

Subpart 6273—Transfer of Responsibility

§ 6273.0–6 Policy.

State and local governments and private individuals and agencies are encouraged to develop and manage recreation facilities on the public lands for public recreation use and services. Such developments and operations shall be consistent with long-range management plans and authorities of the Bureau, and consistent with leases, licenses, and permits issued under the authority of the regulations in this part.

This Circular replaces Circular 2257.

GPO 830-178

Circular No. 2371

Regulations Pertaining To:

RECREATION MANAGEMENT

Off-road Vehicles

43 CFR 6290

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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PART 6290—OFF-ROAD VEHICLES

Subpart 6290—General

6290.0–1 Purpose.
6290.0–2 Objectives.
6290.0–3 Authority.
6290.0–5 Definitions.
6290.0–8 Applicability.

Subpart 6291—Use of Off-Road Vehicles

6291.1 Use of Off-Road Vehicles.

Subpart 6292—Designation of Public Lands

6292.1 Classes of designation.
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6292.3 Designation criteria.
6292.4 Procedures for designation.

Subpart 6293—Organized Off-Road Vehicle Events

6293.1 Events requiring permits.

Subpart 6294—Management of Off-Road Vehicle Use

6294.1 Effects of use; change in designations or restrictions.

Subpart 6295—Operation of Off-Road Vehicles; Vehicle Standards

6295.1 State law applicable; special rules and standards.
6295.2 Operating regulations.
6295.3 Vehicle standards.

Subpart 6296—Special Regulations [Reserved]

AUTHORITY: 43 U.S.C. 1201; the National Environmental Policy Act of 1969, 42 U.S.C. 4321; 43 U.S.C. 2, 1201; and Executive Order 11644 (37 FR 2877).

Subpart 6290—General

§ 6290.0–1 Purpose.

The purpose of the regulations in this part is to implement Executive Order No. 11644, of February 8, 1972 (3A CFR, 1972 Comp., p. 142; 37 FR 2877).

§ 6290.0–2 Objectives.

The objective of these regulations is to provide procedures to control and direct the use of off-road vehicles on public lands so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 6290.0–3 Authority.

The provisions of this part are issued under 43 U.S.C. 1201; the National Environmental Policy Act of 1969, 42 U.S.C. 4321; 43 U.S.C. 2, 1201; and Executive Order 11644 (37 FR 2877).

§ 6290.0–5 Definitions.

As used in this part:

(a) Except as excluded hereinafter, "Off-Road Vehicle" means any vehicle designed for, or capable of, travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, including, but not limited to: Automobiles, trucks, four-wheel drive or low-pressure-tire vehicles, tracked vehicles, motorcycles and related two-wheel vehicles, snowmobiles, amphibious machines, ground-effect or air-cushion vehicles, recreation campers, and any other means of transportation deriving motive power from any source other than muscle. The term "Off-Road Vehicle" excludes: (1) Any non-amphibious registered motorboat; (2) any fire, emergency, or law enforcement vehicle while being used for official or emergency purposes; (3) any vehicle whose use is expressly authorized by a permit, lease, license, agreement, or contract issued by the authorized officer.

(b) "Public Lands" means any lands administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take actions under the regulations of this chapter.

(e) "Organized Event" means a structured, or consolidated, or scheduled meeting involving 25 or more vehicles for the purpose of recreational use of the public lands involving the use of off-road vehicles. The term does not include family groups participating in informal recreational activities.

(f) "Official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his/her employment, agency, or representation.

(g) "Planning system" means the approach provided in Bureau of Land Management directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

§ 6290–0–8 Applicability.

(a) The regulations in this part apply to all public lands except those Federal, State, county, or municipal highways and roads administered by an agency other than the Bureau of Land Management.

(b) The regulations contained in subpart 6296 are special regulations prescribed for the use of off-road vehicles for specific areas, and such regulations may amend, modify, relax, or make more stringent the regulations contained in §§ 6295.2 and 6295.3 of this chapter.

Subpart 6291—Use of Off-Road Vehicles

§ 6291.1 Use of Off-Road Vehicles.

(a) Off-road vehicles operated on the public lands must conform to the vehicle standards set forth in Subpart 6295 of this part.

(b) Any person who operates an off-road vehicle on public lands must comply with the operating regulations set forth in Subpart 6295 of this part at all times and subpart 6296 as applicable while operating such vehicle on public lands.

(c) The operation of off-road vehicles is prohibited on those areas and trails designated as closed to off-road vehicle use except that the authorized officer may allow official use or use pursuant to Part 2920 of this chapter. Such authorization will be for a specific area, conditions of use and period of time and shall be revocable at the discretion of the authorized officer.

(d) Operators of off-road vehicles on those areas and trails designated as restricted must conform to all terms and conditions of the applicable designation order or orders.

(e) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(f) Off-road vehicles are prohibited on trails limited to hiking and horseback riding.

Subpart 6292—Designation of Public Lands

§ 6292.1 Classes of designation.

Public lands will be designated as follows with regard to off-road vehicle use:

(a) *Open use areas and trails.* These are areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle standards set forth at Subpart 6295 of this part.

(b) *Restricted areas and trails.* These are areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the numbers or types of vehicles allowed, times of use, and similar matters. Restricted areas and trails may be designated for special or intensive use, including, but not limited to, organized events.

(c) *Closed areas and trails.* These are areas and trails where the use of off-road vehicles is permanently or temporarily prohibited.

§ 6292.2 Designation.

(a) The authorized officer may designate any public lands as restricted or closed to off-road vehicle use. Public lands not so designated shall remain open to off-road vehicle use and are hereby designated as open use areas and trails except that restrictions and closures regarding the use of public lands that result from authority other than part 6290 shall not be affected by the open use designation of this paragraph.

(b) The authorized officer may redesignate any public lands, including those designated as open to off-road vehicle use, at any time hereafter if he/she determines that redesignation is appropriate.

(c) The authorized officer may temporarily close or restrict public use and travel in accordance with the provisions of § 6010.4 of this chapter, even though public lands have been designated or redesignated in accordance with this subpart.

(d) The authorized officer may apply for the withdrawal, reservation or restriction of public lands in accordance with the withdrawal procedures in Part 2350 of this chapter, even though public lands have been designated or redesignated in accordance with this Subpart.

§ 6292.3 Designation criteria.

Designations of restricted and closed areas and trails will be based on the following:

(a) The ability of the land and its resources to withstand and sustain off-road vehicle use impacts.

(b) Consideration of the scenic qualities of the land, and its cultural, ecological, and environmental values.

(c) The need for public use areas for recreation use.

(d) Consideration of off-road vehicle use impacts on other lands, use, and resources.

(e) The potential hazards to public health and safety, other than the normal risks involved in off-road vehicle use.

(f) The existing or potential quality and quantity of recreational experiences available.

(g) Consideration of the need to minimize harassment of wildlife or significant disruption of wildlife habitat.

(h) The furtherance of the purposes and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

§ 6292.4 Procedures for designation.

(a) *Public participation.* The authorized officer shall to the extent practicable, designate and redesignate areas and trails in conformance with the Bureau of Land Management planning system for the formulation of multiple use management plans. In making designations, he/she will consult with interested user groups, Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account. The authorized officer may act independently of the planning system if he/she deems emergency action to close or restrict areas and trails is essential to attain the objectives of the regulations of this part.

(b) *Identification of designated areas and trails.* The authorized officer shall take appropriate measures to identify areas and trails designated as restricted or closed so that the public will be aware of their locations and restrictions applicable thereto. Public notice of such designations shall be given through publication in local newspapers, and copies of such notices shall be available to the public in local Bureau offices. Areas and trails so designated shall be posted appropriately. The authorized officer will make available to the public such other informational material as may be appropriate.

Subpart 6293—Organized Off-Road Vehicle Events

§ 6293.1 Events requiring permits.

No person or association of persons may conduct any race, rally, meet, contest, or other type of organized event involving the use of off-road vehicles, on public lands without first obtaining a permit to do so from the authorized officer pursuant to Subpart 2924 of Part 2920 of this chapter.

Subpart 6294—Management of Off-Road Vehicle Use

§ 6294.1 Effects of use; changes in designations or restrictions.

The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever he/she deems it necessary to carry out the objectives of this part, he may amend, revise, or revoke any designations made or other actions taken pursuant to the regulations in this part.

Subpart 6295—Operation of Off-Road Vehicles; Vehicle Standards

§ 6295.1 State law applicable; special rules and standards.

(a) Applicable State laws and regulations relating to the use, registration, operation and inspection of off-road vehicles shall apply on public lands.

(b) The authorized officer may establish special rules for the operation of off-road vehicles and special vehicle standards for use on a regional, geographic or operating level applicable to all or any type of off-road vehicle. Notice of such special rules and standards shall be published in the FEDERAL REGISTER, and the public shall be provided the opportunity to comment before adoption.

(c) To the extent that State laws and regulations are lacking or less stringent than the regulations established by this Subpart 6295, the regulations in Subpart 6295 are minimum standards and are controlling.

§ 6295.2 Operating regulations.

No person may operate an off-road vehicle on public lands without a valid operator's license or learner's permit unless accompanied by an adult who has a valid operator's license and who is responsible for the acts of that individual. No person shall operate an off-road vehicle on public lands:

(a) In a reckless, careless, or negligent manner;

(b) In excess of established speed limits;

(c) While under the influence of alcohol or drugs;

(d) In a manner likely to cause excessive damage to or disturbance of the land, wildlife, wildlife habitat, or vegetative resources; or

(e) From a half-hour after sunset to a half-hour before sunrise without lighted headlights and taillights.

§ 6295.3 Vehicle standards.

(a) No off-road vehicle may be operated on public lands unless equipped with proper brakes and muffler in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise, may be operated on public lands.

(c) The authorized officer may, by posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau of Land Management offices, indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrestor that meets and is qualified to either the U.S. Department of Agriculture—Forest Service Standard 5100–1a, or the 80 per cent efficiency level when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350, which standards include the requirement that such spark arrestor shall have an efficiency to retain or destroy at least 80 per cent of carbon particles, for all flow rates, and which includes a requirement that such spark arrestor has been warranted by its manufacturer as meeting the above-stated efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation.

Subpart 6296—Special Regulations [Reserved]

This Circular replaces Circular 2360.

GPO 830-179

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2372]

Advisory Boards; Establishment and Composition

Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

PART 1780—COOPERATIVE RELATIONS

1. Subpart 1784 is amended by adding § 1784.5 through 1784.7 to read as follows:

Subpart 1784—Advisory Boards

Sec.
1784.5 National Advisory Boards.
1784.6 State and Regional Advisory Boards.
1784.7 District Advisory Boards.

* * * * *

§ 1784.5 National Advisory Boards.

(a) *National Advisory Board.* (1) *Functions and duties.* The National Advisory Board shall consider and make recommendations to the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and problems of a national scope related to resources and uses of the public lands under the jurisdiction of the Bureau of Land Management.

(2) *Membership.* Each State Multiple Use Advisory Board shall select from its members, at a meeting of each new term, one member to represent livestock on the National Advisory Board. Additionally, each State Multiple Use Advisory Board shall select from its members, at a meeting of each new term, one wildlife representative to serve on the National Advisory Board as follows: in odd numbered calendar years, members from Arizona, Colorado, Idaho, Montana, California, and Alaska; in even numbered years, members from New Mexico, Utah, Wyoming, Oregon, Nevada, and Alaska. The State Directors for the Bureau of Land Management shall submit to the Director of the Bureau of Land Management a list of nominees selected from nonlivestock and nonwildlife interests in their States. From this list and from other sources as he may determine, the Secretary of the Interior shall appoint 20 members to the National Advisory Board as follows: 1 representative from the State of Washington, 1 representative from the State of Alaska, 2 mining representatives, 2 forestry representatives, 2 leasable mineral representatives, 3 outdoor recreation representatives, 2 urban-suburban representatives (including real estate development), 1 environmental quality representative, 1 public information representative, 2 county government representatives, 1 State government representative, 1 soil and water conservation representative, and 1 public utilities representative.

(3) *Meetings.* The Board shall meet at the call of the Director, Bureau of Land Management, and shall elect its own officers. The Federal representative at all meetings shall be the Director, Bureau of Land Management, or his authorized representative.

(4) *Administrative Support.* Administrative support of the Board shall be the responsibility of the Director, Bureau of Land Management.

§ 1784.6 State and Regional Advisory Boards.

(a) *State Multiple Use Advisory Boards.* (1) *Functions and duties.* The State Multiple Use Advisory Boards shall consider and make recommendations to the State Director to whom they report on policies and problems of State or regional scope related to resources and uses of lands administered by the Bureau of Land Management in the State or States within their respective areas of jurisdiction.

(2) Areas of jurisdiction:

Board:	*States of jurisdiction*
Alaska	Alaska.
Arizona	Arizona.
California	California.
Colorado	Colorado.
Idaho	Idaho.
Montana	Montana, North Dakota, South Dakota.
Nevada	Nevada.
New Mexico	New Mexico, Oklahoma, Texas.
Oregon	Oregon, Washington.
Utah	Utah.
Wyoming	Wyoming, Kansas, Nebraska.
Eastern States	Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

(3) *Membership.* From recommendations by District Managers, statewide or regional organizations and associations, and from other sources as he may determine, the State Director to whom the Board will report shall appoint a board of not more than 12 members that is balanced in terms of the points of view represented and the functions to be performed by the Board.

(4) *Meetings.* State multiple use advisory boards shall meet at the call of the State Director to whom the board reports and shall elect their own officers. The Federal representative at all meetings shall be that State Director or his authorized representative.

Published in 40 F.R. 25452, June 16, 1975 - Effective June 17, 1975.

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(5) *Administrative Support.* The administrative support of a State multiple use advisory board shall be the responsibility of the State Director to whom it reports.

(b) *O. and C. Multiple Use Advisory Board (Oregon).* (1) *Functions and duties.* The O. and C. Multiple Use Advisory Board shall consider and make recommendations to the Oregon State Director on policies and problems related to resources and uses of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grants Lands administered by the Bureau of Land Management.

(2) *Membership.* From recommendations by the Oregon State Director, Director, Bureau of Land Management, and from other sources as he may determine, the Secretary shall appoint a board of not more than 12 members that is balanced in terms of the points of view represented and the functions to be performed by the board.

(3) *Meetings.* The O. and C. Multiple Use Advisory Board shall meet at the call of the Oregon State Director and shall elect its own officers. The Federal representative at all meetings shall be the Oregon State Director or his authorized representative.

(4) *Administrative Support.* The administrative support of the O. and C. Multiple Use Advisory Board shall be the responsibility of Oregon State Director.

§ 1784.7 District Advisory Boards.

(a) *District Multiple Use Advisory Boards.* (1) *Functions and duties.* A District Multiple Use Advisory Board shall consider and make recommendations to the District Manager to whom it reports on policies and problems of District scope related to resources and uses of lands administered by that District Manager.

(2) *Membership.* The District Manager to whom the board reports shall, with the concurrence of the State Director, appoint to the board such members resulting in a total membership that is balanced in terms of the points of view represented and the functions to be performed by the board. The membership of each District Multiple Use Advisory Board shall not exceed ten.

(3) *Meetings.* District Multiple Use Advisory Boards shall meet at the call of the District Manager to whom the board reports and shall elect their own officers. The Federal representative at all meetings shall be that District Manager or his authorized representative.

(4) *Administrative support.* The administrative support of a District Multiple Use Advisory Board shall be the responsibility of the District Manager to whom it reports.

PART 4110—GRAZING ADMINISTRATION

2. In Subpart 4114, the heading is revised to read:

Subpart 4114—Local Associations of Stockmen

§§ 4114.3–1—4114.3–4 [Deleted]

§ 4114.4–3 [Amended]

3. Sections 4114.1 through 4114.3–4 and paragraph (c) of § 4114.4–3 are deleted.

§ 4115.2–1 [Amended]

4. Section 4115.2–1 is amended as follows: (a), (b), and (c) are revised to read as follows:

(a) *Filing of applications; consideration of annual changes in grazing use.* Each year a date will be set by the authorized officer prior to which all annual applications for grazing use must be filed; applications filed after such date may be rejected for that year on the basis of late filing. When grazing is approved, a bill will be issued and payment of fees due will be made in accordance with paragraph 4115.2–1(k).

(b) *Proposed decisions; protests.* If the authorized officer's decision on an application for grazing use is to any extent adverse, a proposed decision will be served upon the applicant setting forth the reasons for the action, including reference to the pertinent provisions of the regulations. Such proposed decision shall allow a period of 15 days after receipt for the filing of a protest in person or in writing with the authorized officer. In the absence of a protest, the proposed decision shall become the final decision of the authorized officer without further notice.

(c) *Final decision on protests.* Upon the timely filing of a protest, the authorized officer will reconsider the application for grazing use in the light of such protest. In so doing, he is authorized to seek advice and recommendations from the District Multiple Use Advisory Board. At the conclusion of his review of the protest, the authorized officer will issue a final decision which shall be served on the applicant and all known parties of interest.

* * * * *

In (e)(8)(ii) the words "after recommendation by the advisory board" are deleted.

In paragraphs (e)(1) and (e)(11) the words "after reference to the advisory board" are deleted.

§ 4115.2–2 [Amended]

Section 4115.2–2 is amended in paragraphs (a)(2) and (b)(3) by deleting the words "after reference to the advisory board".

§ 4115.2–5 [Amended]

5. Section 4115.2–5(a)(3) is amended by deleting the words "after reference to the advisory board".

JUNE 10, 1975.

KENT FRIZZELL,

Acting Under Secretary of the Interior.

[FR Doc.75–15550 Filed 6–13–75;8:45 am]

GPO 830 - 587

Title 43—Public Lands: Interior

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2373]

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PART 2650—ALASKA NATIVE SELECTIONS

Miscellaneous Amendments

Part 2650 of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 2650.0–7(d) is revised to read:

§ 2650.0–7 References.

* * * * *

(d) Appeals procedures are contained in 43 CFR Part 4, Subpart J.

* * * * *

2. Section 2650.3–2(a) is revised to read as follows:

§ 2650.3–2 Mining claims.

(a) *Possessory rights.* Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any unpatented mining claim may be contested by the United States, the grantee of the United States or its successor in interest, or by any person who may initiate a private contest. Contest proceedings and appeals therefrom shall be to the Interior Board of Land Appeals.

* * * * *

3. Section 2650.8 is revised to read as follows:

§ 2650.8 Appeals.

Any decision relating to a land selection shall become final unless appealed to the Alaska Native Claims Appeal Board by a person entitled to appeal, under, and in accordance with, Subpart J of Part 4, 43 CFR.

4. Section 2651.2(a)(4), is amended by the revision of the last sentence thereof to read:

§ 2651.2 Eligibility requirements.

(a) * * *

(4) * * * Such decision shall become final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeal Board within 30 days of its publication in the FEDERAL REGISTER.

* * * * *

5. Section 2651.2(a)(5), is revised to read:

§ 2651.2 Eligibility requirements.

(a) * * *

(5) *Action on appeals.* Appeals shall be made to the Alaska Native Claims Appeal Board in accordance with Subpart J of Part 4 of this title. Decisions of the Board on village eligibility appeals are not final until personally approved by the Secretary.

* * * * *

(Sec. 25 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. § 1601–1624) (Supp. II, 1972); Administrative Procedure Act (5 U.S.C. et seq)

Dated: July 29, 1975.

KENT FRIZZELL,
Acting Secretary of the Interior

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Published in 40 F.R. 33174, August 6, 1975 - Effective August 6, 1975.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular 2374]

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Amount of Bond Required of Lessee

§ 3304.1 Amount of bond required of lessee.

The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms of the lease, unless he already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the Outer Continental Shelf in the area in which the successful bidder's lease is situated; for the purposes of this provision there are four areas: (a) the Gulf of Mexico; (b) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (c) the area offshore the Coast of Alaska; and (d) the area offshore the Atlantic Coast. A separate bond will be required for each area. * * *

SEPTEMBER 17, 1975.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.75-25134 Filed 9-19-75;8:45 am]

Published in 40 F.R. 43489, September 22, 1975.

Circular Distribution List

GPO 831-909

Circular Distribution List

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER C—MINERALS MANAGEMENT
(3000)
Circular 2375

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Qualified Joint Bidders

1. Section 3300.1 is amended to read as follows:

§ 3300.1 Persons qualified to hold leases.

Mineral leases issued pursuant to section 8 of the Act may be held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. § 1101(a)(20) private, public, or municipal corporations organized under the laws of the United States or of any State or Territory thereof, or associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

2. Section 3302.1 is amended to read as follows:

§ 3302.1 General.

Tracts will be offered for lease by competitive sealed bidding under conditions specified in the Notice of Lease Offer and in accordance with the provisions of §§ 3300.1, 3302.2, 3302.3 and 3302.4 of this Part. Each oil and gas lease issued pursuant to section 8 of the Act shall cover a compact area not exceeding 5,760 acres.

3. The following new sections are added to Subpart 3302 which reads as follows:

§ 3302.3 Qualified bidders.

§ 3302.3–1 Definitions.

The following definitions shall be applicable to § 3302.3:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the Act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the Act.

(c) *"Average Daily Production"* is the total of all production in an applicable production period which is chargeable under section 3302.3–3 divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude Oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sands, gilsonite, oil shale, or coal.

(f) *"An Economic Interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied Petroleum Products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural Gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and Gas Lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the Act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior Production Period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1) *of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum products* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas Plant Products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C_2H_6;

(B) Propane—C_3H_8;

(C) Butane—C_4H_{10} including all products covered by NGPA specifications for commercial butane.

(1) Isobutane,

(2) Normal butane,

(3) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

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Circular Distribution List

(m) *"Six Month Bidding Period"* means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

§ 3302.3–2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a six month bidding period must have filed under oath with the Director a Statement of Production of crude oil, natural gas, and liquefied petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable six month bidding period, except that for the initial bidding period commencing November 1, 1975, all Statements of Production must be filed no later than October 20, 1975. Statements of Production should be filed with the Director, Bureau of Land Management (attention 722), Washington, D.C. 20240. A Statement of Production shall state whether or not the person filing the Statement of Production was chargeable in accordance with § 3302.3–3 with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period. The Director will, no less than semi-annually, publish in the Federal Register a "List of Restricted Joint Bidders," to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The List of Restricted Joint Bidders shall be made up of those persons who in the judgement of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3302.3–3 with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 3302.4(d) which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(i) of the Act and regulations issued thereunder as having been obtained by fraud or misrepresentation.

§ 3302.3–3. Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) *"Person"* means a natural person or company,

(2) *"Company"* means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) *"Subsidiary"* means a company 50 percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or holding 50 percent or more of the stock or other voting interest.

(4) *"Security or securities"* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 3302.3–2 shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefield petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person: (1) Which has an interest in the reporting person, and (2) in which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of ownership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e) (1) For purposes of computing production of natural gas under § 3302.3–2, chargeability under this section, and reporting under § 3302.4(d), 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 3302.3–2, chargeability under this section, and reporting under § 3302.4(d), 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

§ 3302.3–4 Bids disqualified.

The following bids for any oil and gas lease will be disqualified and rejected in their entirety:

(a) A joint bid submitted by two or more persons who are on the effective List of Restricted Joint Bidders; or

(b) A joint bid submitted by two or more persons when one or more of those persons has not filed the required Statement of Production pursuant to § 3302.-3–2 for the applicable six month bidding period, or when one or more of those persons has failed or refused to file a detailed Report of Production when required to do so under § 3302.4(d); or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides (1) for the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (2) for the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the Act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (3) for the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to two or more persons on the same List of Restricted Joint Bidders; or (4) for any of the types of conveyance described above in Paragraph (c) (1), (2), or (3) where any party to the conveyance has not filed a Statement of Production pursuant to § 3302.3–2 for the applicable

six month bidding period. Assignments expressly required by law, regulation, lease, or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading Statement of Production or detailed Report of Production.

4. Section 3302.4 is amended by adding paragraphs (c) and (d) as follows:

§ 3302.4 What must accompany bids.

* * * * *

(c) In addition to the above, every joint bid submitted for any oil and gas lease shall be accompanied by a sworn statement by each joint bidder stating that the bid is not disqualified under § 3302.3-4(c).

(d) To verify the accuracy of any statement submitted pursuant to §§ 3302.3-2 and paragraph (c) of this section the Director may require the person submitting such information to (1) submit no later than 30 days after receipt of request by the Director a detailed Report of Production which shall list in barrels the average daily production of crude oil, natural gas, and liquefied petroleum products chargeable to the reporting person in accordance with § 3302.3-3 for the prior production period, and (2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas, and liquefied petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information upon which any information in any Statement of Production or Report of Production was based or from which it was derived.

5. Section 3302.5 is amended to read as follows:

§ 3302.5 Award of leases.

Sealed bids received in response to the Notice of Lease Offer shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids will be accepted or rejected at that time. In accordance with section 8 of the Act, leases will be awarded only to the highest qualified responsible bidder. The United States reserves the right and discretion to reject any and all bids received for any tract, regardless of the amount offered. Awards of leases will be made only by written notice from the authorized officer. Such notices shall transmit the lease forms for execution. In the event the highest bids are tie bids, the bidders, unless they would be disqualified under § 3300.1, or disqualified under § 3302.3-4 if their bids had been a joint bid, may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids will be rejected. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for that lease will be considered rejected. Notice of his action will be transmitted promptly to the several bidders. If the lease is awarded, three copies of the lease will be sent to the successful bidder and he will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later, to execute them, pay the first year's rental and the balance of the bonus bid, and file a bond as required in § 3304.1. Deposits on rejected bids will be returned. If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations his deposit will be forfeited and disposed of as other receipts under the Act. If before the lease is executed on behalf of the United States the land which would be subject to the lease is withdrawn or restricted from leasing, the bidder will lose all right to the lease and all payments made by the bidder will be refunded to him. If the awarded lease is executed by an agent acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the agent to execute the lease. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed on behalf of the United States, and one fully executed copy will be mailed to the successful bidder.

Subpart 3305—Assignments or Transfers

6. Section 3305.1 is amended to read as follows:

§ 3305.1 Assignment of leases or interests therein.

Leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, subject to the approval of the authorized officer, to any one qualified under § 3300.1 to take and hold a lease. An assignment pursuant to any pre-lease agreement described in § 3302.3-4(c) as causing a bid to be disqualified will be void. Any assignment made under this section shall, upon approval, be deemed to be effective on and after the first day of the lease month following its filing in the appropriate office of the Bureau of Land Management, unless at the request of the parties an earlier date is specified in the Director's approval. The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

7. Section 3305.2 is amended by the addition of a new paragraph (e) as follows:

§ 3305.2 Requirements for filing of transfers.

* * * * *

(e) Where the proposed assignment or transfer is by a person who, at the time of acquisition of his interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor must file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest therein.

Dated: September 26, 1975.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.75-26212 Filed 9-30-75;8:45 am]

GPO 831-992

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

[Circular 2376]

PART 2—RECORDS AND TESTIMONY

Privacy Act Regulations

Subpart D—Privacy Act

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Subpart D—Privacy Act

§ 2.45 Purpose and scope.

This subpart contains the regulations of the Department of the Interior implementing section 3 of the Privacy Act. Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act. Sections 2.60 through 2.66 describe the procedure under which an individual may determine whether a system of records subject to the Act contains a record relating to him and the procedure under which he may seek access to that record, if one should exist. Sections 2.70 through 2.77 describe the procedure under which an individual may petition for amendment of a record subject to the Act relating to him. Section 2.79 lists records systems partially exempt from the Act.

§ 2.46 Definitions.

(a) *Act.* As used in this subpart, "Act" means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Bureau.* For purposes of this subpart, a "bureau" is any constituent bureau or office of the Department, including the Office of the Secretary and any other Departmental office.

(c) *Individual.* As used in this subpart, "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Maintain.* As used in this subpart, the term "maintain" includes maintain, collect, use or disseminate.

(e) *Record.* As used in this subpart, "record" means any item, collection, or grouping of information about an individual that is maintained by the Department or a bureau thereof, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(f) *System of records.* As used in this subpart, "system of records" means a group of any records under the control of the Department or a bureau thereof from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(g) *Medical records.* As used in this subpart, "medical records" means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(h) *Civil Service Commission personnel records.* As used in this subpart, "Civil Service Commission personnel records" means records maintained for the Civil Service Commission by the Department and used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(i) *Statistical records.* As used in this subpart, "statistical records" means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(j) *Routine use.* As used in this subpart, "routine use" means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(k) *System notice.* As used in this subpart, "system notice" means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the FEDERAL REGISTER.

(l) *System manager.* As used in this subpart, "system manager" means the official designated in a system notice as having administrative responsibility for a system of records.

(m) *Departmental Privacy Act Officer.* As used in this subpart, "Departmental Privacy Act Officer" means the official in the Office of the Assistant Secretary-Management charged with responsibility for assisting the Assistant Secretary-Management in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the bureaus of the Department in carrying out the functions which they are assigned in this subpart.

(n) *Bureau Privacy Act Officer.* As used in this sub-part, "Bureau Privacy Act Officer" means the official within each bureau assigned responsibility for bureau implementation of the Act and the regulations of this subpart.

§ 2.47 Records subject to Privacy Act.

The Privacy Act applies to all "records," as that term is defined in § 2.46(e), which the Department maintains in a "system of records," as that term is defined in § 2.46(f).

§ 2.48 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

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(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3) (i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 2.49 [Reserved]

§ 2.50 Federal Register notices describing systems of records.

(a) The Privacy Act requires annual publication of a notice in the FEDERAL REGISTER describing each system of records subject to the Act. 5 U.S.C. 552a(e)(4).

(b) Each bureau shall notify the Departmental Privacy Act Officer, no later than August 1 of each year, of any modifications or amendments which are required in the then-current notice describing the system for which he is responsible.

(c) A bureau desiring to establish a new system of records or a new use for an existing system of records shall notify the Departmental Privacy Act Officer, no fewer than seventy-five (75) calendar days in advance.

§ 2.51 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. 5 U.S.C. 552a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 2.52 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the bureau responsible for the system shall, no later than December 31, 1976, supplement that security by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For the purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Privacy Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Privacy Act.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.[1]

(e) *Bureau responsibility.* (1) The bureau responsible for a system of records shall be responsible for assuring that specific procedures are developed to assure that the records in the system for which it is responsible are maintained with security meeting the requirements of the Act and this section.

(2) These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the records contained in the system.

§ 2.52 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Department may disclose records subject to the Privacy Act unless disclosure is permitted under § 2.56 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Department may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 2.70–2.75 or the decision of a court of competent jurisdiction.

(d) *Bureau responsibility.* The bureau responsible for a system of records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section and of 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions listed in § 2.56 (b) and (c).

§ 2.53 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Department of a system of records to accomplish a Department function, the contract shall, consistent with the Department's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this subpart to be applied to such system.

(b) *System manager.* The head of the bureau responsible for the contract shall designate a regular employee of the bureau to be the manager for a system of records operated by a contractor.

[1] [Text of 5 CFR 293.108 will be set out when that section is finalized by the Civil Service Commission.]

§§ 2.54—2.55 [Reserved]

§ 2.56 Disclosure of Records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Department who have a need for the record in the performance of their duties; or

(2) required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) for a routine use as defined in § 2.46(j) which has been described in a systems notice published in the FEDERAL REGISTER;

(2) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code.

(3) to a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under Subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Department indicating that the record may not be fully accurate, complete, or timely.

§ 2.57 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 2.56 (c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 2.56(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 2.63.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 2.56(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§§ 2.58–2.59 [Reserved]

§ 2.60 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) (i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 2.61 Requests for notification of existence of records: Action on.

(a) *Decisions on Request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be promptly advised whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that he is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the system manager responsible for the system of records concerning which inquiry has been made and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision informing and individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Assistant Secretary-Management pursuant to § 2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary-

Management, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 2.62 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

§ 2.63 Requests for access to records: Submission.

(a) *Submission of requests.* (1)(i) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning access to records in the system, an individual desiring to request access to records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in custody of records pertaining to that individual.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 2.64(d) the failure to state willingness to pay fees as high as are anticipated by the Department will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

§ 2.64 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the system manager responsible for the system of records in which the requested record is located and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 2.64(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to Assistant Secretary-Management pursuant to § 2.65 by writing to Privacy Act Officer, Office of Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 2.63.

(2) Fees for copying a record in response to a request made under § 2.63 shall be charged in accordance with the schedule of charges contained in Appendix A to this Part, unless the official responsible for processing the request determines that, in his opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 2.65 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* If an individual has been notified that he is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record, that individual may appeal to the Assistant Secretary-Management.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Assistant Secretary-Management may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 2.61 and 2.63 shall be decided for the Department by the Assistant Secretary-Management after consultation with the Solicitor.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 2.66 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to recieve the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§§ 2.67–2.69 [Reserved]

§ 2.70 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if he believes the record is not accurate, relevant, timely or

complete. 5 U.S.C. 552a (d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 2.71 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 2.72 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 2.48. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Departmental Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the system manager responsible for the system of records containing the challenged record and must, if he declines to amend the record as requested, be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that his (the bureau head's) own concurrence in the decision be obtained.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holiday excepted), the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 2.71, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 2.71.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Assistant Secretary-Management by writing to the Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior. Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) *Implementation of initial decision.* If a petitioned for amendment is accepted, in whole or part, the bureau maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 2.57 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 2.73 Petitions for amendments: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 2.72(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 2.72(d), that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(iii) Some or all of the challenged records are of concern to another bureau of the Department or another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 2.74 Petitions for amendment: Appeals.

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to Assistant Secretary-Management.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Assistant Secretary-Management may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary-Management, U.S. Department of the Interior, Washington, D.C. 20240.

§ 2.75 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Department by the Assistant Secretary-Management. after consultation with the Solicitor, unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Department. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Department shall be transmitted by the Assistant Secretary-Management to the Director, Bureau of Manpower Information System, U.S. Civil Service Commission, for decision.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Secretary

of the Interior. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 2.77 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Department's refusal to amend the record.

(3) If the determination reverses, in whole or part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 2.76 [Reserved]

§ 2.77 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Assistant Secretary-Management under § 2.75 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Department for not making the requested amendments may also be provided to recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which they pertain.

§ 2.78 [Reserved]

§ 2.79 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. § 552a(j)(2) the following systems of records have been exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these subsections:

(1) Investigative Case File System, Interior/FWS-20.

(2) Law Enforcement Services System, Interior/BIA-18.

(3) Law Enforcement Statistical Reporting System, Interior/NPS-19.

(b) *Law enforcement records exempt under 5 U.S.C. 552a (k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) Investigative Records, Interior/Office of the Secretary-6.

(2) Permits System, Interior/FWS-21.

(3) Criminal Case Investigation System, Interior/BLM-18.

(4) Civil Trespass Case Investigations, Interior/BLM-19.

(5) Employee Conduct Investigations, Interior/BLM-20.

(6) Special Investigations, Coal Mine Health and Safety, Interior/MESA-10.

(7) Employee Conduct Investigations, Interior/MESA-4.

(8) Employee Financial Irregularities, Interior/NPS-17.

(9) Trespass Cases, Interior/Reclamation-37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(c) *Investigatory records exempt under 5 U.S.C. 552a(k)(5).* Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) Applicant Files System, Interior/Office of the Secretary—29.

(2) National Research Council Grants Program, Interior/GS-9.

SEPTEMBER 20, 1975.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-25580 Filed 9-25-75;8:45 am]

GPO 832-305

proposed rules

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 3500, 3520]

[Circular No. 2377]

COAL LEASES

Diligent Development and Continuous Operations

On page 43229 of the FEDERAL REGISTER of December 11, 1974, there were published a notice and text of a proposed amendment to §§ 3500.0–5 and 3522.1–2 of Title 43, Code of Federal Regulations. The purpose of the amendment was to provide definitions for terms relating to coal leases. Interested persons were granted an opportunity from January 10, 1975, until February 3, 1975, to submit comments, suggestions, or objections to the proposed amendment. Comments have been received and considered, and revisions have been made to the proposed amendment. Since extensive revisions have been made, the new proposed rules are now being published for comment.

Interested persons are invited to submit their comments in writing to the Director, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240, on or before January 30, 1976.

The purpose of the proposed amendment is to revise the regulations relating to coal leases by defining the terms "logical mining unit," "logical mining reserves," "diligent development," and "continuous operation," and to modify the regulations relating to the duration and the adjustment of terms and conditions of coal leases. Section 7 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 207), authorizes the issuance of coal leases for an indeterminate period upon condition of diligent development and continued operation of the mine. When read together, the phrases "diligent development" and "continuous operation" indicate a statutory intent that holders of coal leases should promptly reach a reasonable level of production and then maintain it.

The proposed amendment which follows is based on the principle that a clear standard for judging whether development has been diligent and whether operation is continuous requires definition of a rate of production from the mine which is appropriate in light of the size of the leased reserves, and a time by which that rate must be attained. In granting new leases the Bureau of Land Management has already adopted a policy of including financial incentives in the form of advance royalty payments to encourage mining at a rate which would exhaust the recoverable reserves within 40 years from the date of the lease. The same general approach has been used in this proposed amendment. It sets a production standard for diligent development and continuous operation and provides that leases which do not meet the standard would be subject to cancellation. Although all existing leases contain requirements for diligent development, explicit standards of diligent development and continuous operation have not been defined or enforced. Existing leases are, therefore, treated for the purpose of this amendment as though they were dated as of the effective date of the amendment, insofar as the statute and existing lease terms permit.

The Bureau of Land Management is aware that many coal mines involve extraction of both Federal and non-Federal coal, and that inflexibly applied regulations for diligent development and continuous operation on the Federal portion of the mine could lead to distortions of mining practice to the detriment of sound conservation and economic operations. For this reason, the amendment defines a "logical mining unit" which may include non-Federal coal, and defines diligent development and continuous operation for the logical mining unit as a whole in such a way as to give the lessee reasonable flexibility in operating and developing the mine, consistent with exhaustion of the Federal deposits in 40 years.

Finally the amendment announces that, at the time of the next scheduled adjustments of the terms of existing leases, which come at twenty-year intervals dating from the date of issuance of the lease, advance royalty terms will be included based on a schedule of mining which would exhaust the deposit in 40 years from the effective date of the regulation. A lessee who produced ahead of this schedule prior to the next scheduled adjustment of terms would receive credits against later advance royalties, thereby providing a financial incentive to encourage timely development and production of Federal coal before the scheduled adjustment of terms of existing leases.

It is proposed to amend Chapter II of Title 43, Code of Federal Regulations, as set forth below.

1. 43 CFR 3500.05 is amended by the addition of the following new paragraphs (d), (e), (f), and (g):

§ 3500.0–5 Definitions.

* * * * *

(d) *Logical Mining Unit (LMU).* A Logical Mining Unit or LMU is an area of coal land that can be developed and mined in an efficient, economical and orderly manner with due regard to the conservation of coal reserves and other resources. An LMU may consist of one or more Federal leaseholds, and may include intervening or adjacent non-Federal lands, if all lands are under the effective control of a single operator and can be developed and operated as a unified mine. It may also consist of lands committed to a contract for collective prospecting, development, or operations approved by the Secretary pursuant to the Act of August 31, 1964 (30 U.S.C. 201–1). The Mining Supervisor is authorized to approve or establish an LMU. Every Federal lease will automatically be considered by itself an LMU as of the effective date of the lease or (the effective date of these regulations), whichever is later. The boundaries of an LMU may later be changed (1) upon application by the lessee or operator and with the approval of the Mining Supervisor and the concurrence of the authorized officer, or (2) at the discretion of the Mining Supervisor with the concurrence of the authorized officer, or (3) at the request of the authorized officer with the approval of the Mining Supervisor.

(e) *Logical Mining Unit (LMU) Reserves.* LMU Reserves as of a given date are defined as being equal to the sum of (1) estimated recoverable reserves under Federal lease in the LMU at that time and (2) estimated non-Federal recoverable reserves then in the LMU which will be mined prior to the extraction of all estimated Federal reserves then in the LMU. The LMU reserves associated with a given Federal lease are the estimated LMU reserves as of the effective date of that lease or (the effective date of these regulations), whichever is later. Since the effective dates of different Federal leases in a given LMU may differ, the estimated LMU reserves associated with those leases may also differ. The estimate of recoverable reserves under both (1) and (2) above may be adjusted by the Mining Supervisor whenever significant new information becomes available about the amount of such reserves, including the time at which a mining plan is approved for the Federal portion.

(f) *Diligent Development.* Diligent Development of a Federal lease means the timely preparation for and initiation of production of coal from the LMU of which the lease is a part so that one-fortieth of the LMU reserves associated with that lease are extracted within a period of ten years from (the date of this regulation) or from the date of the lease, whichever occurs later.

(1) Upon application by the lessee, the period by the end of which diligent development must have been achieved, shall be increased by an amount of time equal to the period during which diligent development is, in the opinion of

(40 Federal Register 60070, December 31, 1975)

the Secretary, significantly impaired by (i) a strike, the elements, or casualties attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, or (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In the determination of whether any of the conditions listed in (i)–(iii) above occurred and whether one or more of those conditions did in fact significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Any extension of time for achieving diligent development granted by the Secretary under paragraph (f)(1) of this section shall include notification of the revised date by which diligent development must be achieved.

(g) *Continuous Operation.* Continuous operation on a given lease means extraction, processing or marketing of coal from the LMU of which the lease is a part, after diligent development has been achieved, in the amount of one percent or more of the LMU reserves in each calendar year, subject to the exceptions contained in 30 U.S.C. 207 and in the [illegible] if any.

2. 43 CFR 3522.2–1 is amended by the following modification (a) and addition (b):

§ 3522.2–1 Terms and Conditions.

(a) *General.* Coal, potassium, and phosphate leases are subject to readjustment of the terms and conditions of the lease at the end of each 20-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after receipt of the notice, unless the lessee or operator files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms. Notice of the proposed readjustments or that no readjustment is to be made will be given, whenever feasible, before the expiration of each such 20-year period.

(b) *Coal.* Coal leases outstanding at the effective date of these regulations which do not contain advance royalties according to a schedule of production sufficient to exhaust the deposit in 40 years, dated prior to January 1, 1975, will be subject to change in advance royalty terms and conditions at the next schedule adjustment of terms and conditions under paragraph (a) of this section after (the effective date of these regulations). The new advance royalty terms and conditions will be based on a standard schedule of production sufficient to exhaust the elapsed deposit within 40 years from (the effective date of these regulations). The advance royalty rates for the years following the readjustment of terms will be those rates appropriate for a lease dated (the effective date of these regulations). Lessees will be allowed to credit against the advance royalties due under those rates any production royalties paid in lease years prior to the readjustment of terms, which production royalties are in excess of advance royalties that would have been due had advance royalties been in effect from (the effective date of these regulations).

3. 43 CFR 3523.2–1(b)(1) is amended to read as follows:

§ 3523.2–1 Judicial Proceedings.

(b) *Exceptions*—(1) *Coal.* Any coal lease on which there are not diligent development and continuous operation in accordance with Section 3500.0–5 will be subject to cancellation in whole or in part. In deciding whether to cancel a lease under this subparagraph, the Secretary will not consider adverse circumstances which arise out of normally foreseeable business risks, such as fluctuations in prices, sales or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

* * * * *

THOMAS S. KLEPPE,
Secretary of the Interior.

DECEMBER 22, 1975.

[FR Doc.75–35084 Filed 12–30–75;8:45 am]

(40 Federal Register 60070, December 31, 1975)

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2378]

PART 2090—SPECIAL LAWS AND RULES

PART 2610—SCRIP

Veterans Benefits

The authorities (43 U.S.C. 271, 272, 273; Pub. L. 88-545, 78 Stat. 751) for issuance of 43 CFR 2096.0-3(b); 2096.1-1(b) and 2096.1-2(a) (2), (3), (4), and (5) providing for benefits to veterans who served in certain wars prior to 1922; and 43 CFR Part 2610 providing for retirement of scrip, lieu selection, and similar rights have expired or have been fully executed.

Therefore, 43 CFR 2096.0-3(b); 2096.1-1(b) and 2096.1-2(a) (2), (3), (4), and (5) and 43 CFR Part 2610 are deleted from the Code of Federal Regulations.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 5, 1976.

[FR Doc.76-596 Filed 1-8-76;8:45 am]

Published in 41 F.R. 1597, January 9, 1976.

Circular Distribution List

GPO 833-245

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2379]

PART 2090—SPECIAL LAWS AND RULES

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Classification of Lands for Disposal Under Recreation and Public Purposes Act

1. In § 2091.3–2, the heading and paragraph (a) are revised to read as follows:

§ 2091.3–2 Under the Recreation and Public Purposes Act.

(a) Lands classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869), are segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or amendment thereof.

* * * * *

2. In § 2741.2, paragraph (d) is revised to read as follows:

§ 2741.2 Classification of the land.

* * * * *

(d) Lands classified pursuant to the act are segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or amendment thereof.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 5, 1976.

[FR Doc.76–595 Filed 1–8–76;8:45 am]

Published in 41 F.R. 1598, January 9, 1976 - Effective February 9, 1976.

Circular Distribution List

Published in 41 F.R. 1595, January 9, 1976 - Effective February 9, 1976.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2380]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Qualified Joint Bidders

Section 3302.3–2 is amended by the addition of a new paragraph (d).

§ 3302.3–2 Joint bidding requirements.

* * * * *

(d) Whenever leases are offered for lands in a frontier area or any other high risk area or any other area which presents unusually high cost exploration or development costs, the "notice of lease offer" for those leases published pursuant to 43 CFR 3301.5 may provide that the provisions of 43 CFR 3302.3–2(a), 3302.3–4, and 3302.4(c), and the second sentence of 3305.1 with respect to prelease agreements will not be applicable to such leases.

Dated: January 21, 1976.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

[FR Doc.76–2142 Filed 1–23–76;8:45 am]

Published in 41 F.R. 3737, January 26, 1976 - Effective immediately.

Circular Distribution List

GPO 833-535

Published in 41 F.R. 3737, January 26, 1976 - Effective immediately.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 238]

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

Joint Bidding on Oil and Gas Leases

§ 3302.3–2 [Amended]

Section 3302.3–2(a) of the regulation is hereby further amended as follows:

Strike the words "* * * except that for the initial bidding period commencing November 1, 1975, all Statements of Production should be filed no later than December 8, 1975," and substitute therefore "* * * except that for the initial bidding period commencing November 1, 1975, all Statements of Production should be filed no later than February 9, 1976."

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

JANUARY 22, 1976.

[FR Doc.76–2388 Filed 1–26–76;8:45 am]

Published in 41 F.R. 3859, January 27, 1976.

Circular Distribution List

GPO 833 - 534

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT

[Circular No. 2382]

PART 4110—GRAZING ADMINISTRATION

District Advisory Boards

Chapter II, Title 43 Part 4111 and 4115 of the Code of Federal Regulations is amended as follows:

§§ 4111.2–1, 4111.3–1 and 4111.3–2 [Amended]

In § 4111.2–1 (a) and (b); 4111.3–1(a); 4111.3–2(a)(1) the words "after recommendation by the advisory board" are deleted.

2. In § 4111.3–1(b) the words "and the advisory board" are deleted.

3. In § 4111.3–2(a)(2) the words "to the advisory board" are deleted.

4. In § 4111.3–2(b) the words "; a recommendation thereon made by the advisory board," are deleted.

§ 4111.4–2 [Amended]

5. In § 4111.4–2 the words "recommendation of the advisory board and" are deleted.

§ 4111.4–3 [Amended]

6. In § 4111.4–3 the words "after recommendation by the district advisory board" are deleted from paragraphs (b) and (d) and the words "and after obtaining advice from the district advisory board" are deleted from paragraph (c).

§ 4115.2–4 [Amended]

7. In § 4115.2–4 the words "after considering the recommendation of the district advisory board" are deleted.

§ 4115.2–1 [Amended]

8. In § 4115.2–1(e)(10) the words "after reference to the advisory board" are deleted.

§ 4115.2–5 [Amended]

9. In § 4115.2–5(b)(1) the words "grazing district" are deleted.

JACK O. HORTON,
Assistant Secretary of the Interior.

MARCH 1, 1976.

[FR Doc.76–8109 Filed 3–19–76;8:45 am]

Published in 41 F.R. 11822, March 22, 1976 - Effective upon publication.

Circular Distribution List

Published in 41 F.R. 11822, March 22, 1976 - Effective upon publication.

Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2383]

PART 4700—WILD FREE-ROAMING HORSE AND BURRO PROTECTION, MANAGEMENT, AND CONTROL

Wild Free-Roaming Horse and Burro Management

Group 4700 of 43 CFR is hereby amended as follows:

Subpart—Purpose; Objective; Authority; Definition; Policy

Sec.

4700.0–1 Purpose.
4700.0–2 Objectives.
4700.0–3 Authority.
4700.0–5 Definitions.
4700.0–6 Policy.

Subpart 4710—Coordination

4710.1 Joint National Advisory Board.
4710.2 State agencies.
4710.3 Cooperative agreements.

Subpart 4720—Removal of Claimed Trespass Horses and Burros

4720.1 Unauthorized and Unbranded animals.
4720.2 Claimed animals.
4720.3 Trespass animals.

Subpart 4730—Management Considerations

4730.1 Planning.
4730.2 Intensity of management.
4730.3 Habitat reservation and allocation.
4730.4 Closures to livestock grazing.
4730.5 Designation of specific ranges.
4730.6 Herd management plan.

Subpart 4740—Removal and Relocation of Excess Animals or Problem Animals

4740.1 Capture.
4740.2 Relocation.
4740.3 Disposal.
4740.3–1 Acts of mercy.
4740.3–2 Disposal of carcasses.

Subpart 4750—Management on Private Lands

4750.1 Criteria for animals on private lands.
4750.2 Maintenance.
4750.3 Removal.

Subpart 4760—Enforcement Provisions

4760.1 Arrest.
4760.2 Penalties.

Subpart 4700—Purpose; Objectives; Authority; Definitions; Policy

§ 4700.0–1 Purpose.

To implement the laws relating to wild free-roaming horses and burros on public lands.

§ 4700.0–2 Objectives.

The objective of these regulation is to provide criteria and procedures for protecting, managing, and controlling wild free-roaming horses and burros as a recognized component of the public land environment.

§ 4700.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), and the Act of June 28, 1934 (43 U.S.C. 315–315r).

§ 4700.0–5 Definitions.

(a) "Authorized Officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(b) "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros and their progeny that have used public lands on or after December 15, 1971, or that do use these lands as all or part of their habitat, including those animals given an identifying mark upon capture for live disposal by the authorized officer. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro which entered or was introduced onto public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership.

(c) "Herd" means one or more stallions and their mares or jacks and their jennies.

(d) "Excess animals" means wild free-roaming horses or burros determined to be in excess of populations proper to maintain a thriving natural ecological balance and harmonious multiple-use relationship in an area of the public lands.

(e) "Problem animal" means a wild free-roaming horse or burro whose demonstrated individual habits or traits pose an undue threat to the safety or welfare of persons, wildlife, livestock, or property; or a wild free-roaming horse or burro infected by a contagious disease or suspected of being diseased or seriously ill.

(f) "Public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management.

(g) "Wild horse or burro range" means a specifically designated area of land needed to sustain a herd or herds of wild free-roaming horses or burros, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple use management of the public lands.

(h) "Management plan" means a written program of action designed to protect, manage, and control wild free-roaming horses and burros and maintain a natural ecological balance on the public lands.

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340).

(j) "Advisory Board" means the joint advisory board established by the Secretary of the Interior and the Secretary of Agriculture pursuant to section 7 of the Act.

§ 4700.0–6 Policy.

(a) Wild free-roaming horses and burros are under the jurisdiction of the Secretary of the Interior and will be managed as an integral part of the natural systems of the public lands. They will be protected from unauthorized capture, branding, undue disturbance, and destruction. They and their habitat will be managed and controlled in a manner designed to achieve and maintain a thriving ecological balance on the public lands and a thriving population of sound, healthy individuals, all in accordance with the basic program policies for public land management set forth in Subpart 1725 of this chapter.

(b) Wild free-roaming horses and burros on the public lands will be managed by the authorized officer, with full public participation and such cooperative arrangements as he may find helpful. Management on public lands will not be assigned to any private individual or association through a grazing license, lease, or permit.

Subpart 4710—Coordination

§ 4710.1 Joint National Advisory Board.

Policies and guidelines relative to proposals for establishment of ranges, proposed management plans, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the Advisory Board for recommendations.

§ 4710.2 State agencies.

(a) All management activities including, but not limited to, establishment of ranges and adjustments in forage allocation shall be planned and executed in consultation with the appropriate State agency to further consider the needs of all wildlife, particularly endangered species.

(b) All actions taken in connection with private ownership claims to unbranded horses and burros shall be coordinated to the fullest extent possible with the appropriate State agency.

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Circular Distribution List

§ 4710.3 Cooperative agreements.

The authorized officer may enter into cooperative agreements with other landowners, private citizens, nonprofit organizations, and with Federal, State, and local governmental agencies as he deems necessary for purposes of protecting, managing and controlling wild free-roaming horses and burros. Where the grazing patterns of the animals require utilization of lands in other ownerships or administration, the authorized officer shall seek cooperative agreements to insure continuance of such use.

Subpart 4720—Removal of Claimed Trespass Horses and Burros

§ 4720.1 Unauthorized and unbranded animals.

(a) All unauthorized and unbranded horses and burros on the public lands, except those which entered or were introduced onto the public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership are presumed for the purpose of management to be wild free-roaming horses or burros.

(b) The gathering or rounding up of unbranded horses or burros on the public lands where any of such animals are not in fact authorized to be on the public lands pursuant to a grazing license, permit, lease, or other authorization, is prohibited without written authorization from the authorized officer. Also prohibited without written authorization from the authorized officer is the gathering or rounding up of unauthorized branded horses or burros where the branded animals are, or may become, intermingled with wild free-roaming horses or burros, or where the gathering or round up is likely to involve or affect wild free-roaming horses or burros.

§ 4720.2 Claimed animals.

(a) Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. All written authorizations to gather claimed animals shall be on a form approved by the Director. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with the legislation which prohibits the use of aircraft or motor vehicles to capture unbranded horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

(b) After the animals have been gathered the authorized officer and the appropriate state or local official shall inspect each claimed animal in relation to the evidence of ownership previously presented by the claimant. The state or local official shall then make a written determination of ownership concerning each claimed animal pursuant to the state branding and estray laws and any agreement between the Bureau and the appropriate state or local authority. A copy of the written determination shall be provided to the authorized officer. No animal may be removed from the gathering place until the claim of ownership has been proven to the satisfaction of the authorized officer.

§ 4720.3 Trespass animals.

Unauthorized horses or burros which have been claimed and have been determined to be privately owned in accordance with the provisions of this Section will be considered to have been in trespass and may not be released until a proper trespass charge has been determined by the authorized officer in accordance with the provisions of 43 CFR 9239.3.

Subpart 4730—Management Considerations

§ 4730.1 Planning.

In planning for management, protection, and control of wild free-roaming horses and burros, including the establishment of specifically designated ranges, determination of desirable numbers and other management provisions of these regulations, the authorized officer will utilize the Bureau's multiple-use planning system with its requirements for public participation by and coordination with others.

§ 4730.2 Intensity of management.

Wild free-roaming horse or burro herds may be manager either as one of the components of public land use or on a specifically designated wild horse or burro range. Management practices shall be at the minimal feasible level and shall be consistent to the extent possible and practical with the maintenance of their free-roaming behavior. Management facilities should be designed and constructed to the extent possible to maintain the free-roaming behavior of the herds.

§ 4730.3 Habitat reservation and allocation.

The biological requirements of wild free-roaming horses and burros will be determined based upon appropriate studies or other available information. The needs for soil and watershed protection, domestic livestock, maintenance of environmental quality, wildlife, and other factors will be considered along with wild free-roaming horse and burro requirements. After determining the optimum number of such horses and burros to be maintained on an area, the authorized officer shall reserve adequate forage and satisfy other biological requirements of such horses and burros and, when necessary, adjust or exclude domestic livestock use accordingly. See §§ 4115.2–1 (d) and 4121.2–1(a) of this chapter.

§ 4730.4 Closures to livestock grazing.

The authorized officer may close public lands to use by all or a particular class of domestic livestock where he finds it necessary to allocate all available forage to, or to satisfy other biological requirements of, wild free-roaming horses or burros. Such closures may be made only after appropriate public notice and in accordance with the procedures for reduction or cancellation of grazing privileges provided for under the provisions of this subchapter. See §§ 4115.2–1(d) and 4121.2–1(a) of this chapter.

§ 4730.5 Designation of specific ranges.

The authorized officer may designate and maintain specifically designated ranges principally for the protection and preservation of wild free-roaming horses and burros. In designating specific ranges and herd management areas, the authorized officer, in addition to any other provisions of these regulations, shall:

(a) Consider only those areas utilized by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Consider only those areas where self-sustaining herds can maintain themselves within their established utilization and migratory patterns.

(c) Consider only those areas which are capable of being managed as a unit to ensure a sustained yield of forage without jeopardy to the resources.

(d) Develop a wild free-roaming horse or burro management plan in accordance with § 4730.6.

§ 4730.6 Herd management plan.

The authorized officer shall, in connection with the designation of a specific range, develop a proposed wild free-roaming horse or burro management plan designed to protect, manage, and control wild free-roaming horses and burros on the area on a continuing basis. The authorized officer may also develop herd management plans as part of the multiple use management on areas outside of specifically designated wild horse or burro ranges. All management plans shall be developed in accordance with the Bureau's planning system and shall govern management of the area.

Subpart 4740—Removal and Relocation of Excess or Problem Animals

§ 4740.1 Capture.

Under the supervision of the authorized officer, wild free-roaming horses and burros may be captured, corralled and held under humane conditions pending disposal of excess or problem animals under the provisions of this Subpart.

§ 4740.2 Relocation.

(a) The authorized officer may relocate wild free-roaming horses and burros on public lands when he determines such action is necessary to: (1) Relieve overgrazed areas, (2) locate animals removed from private lands in accordance with § 4750.3, (3) remove problem animals, or (4) achieve other purposes deemed to be in the interest of proper resource and herd management. Such animals relocated on public lands shall not be introduced onto areas of the public lands which were not used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) The authorized officer may also place animals in the custody of private persons, organizations or other governmental agencies. Custodial arrangements shall be made through cooperative agreement which shall include provisions to maintain and protect the animals and ensure that the animals will not be used for commercial exploitation. The authorized officer may, in his discretion, mark animals placed in private custody for identification purpose.

§ 4740.3 Disposal.

Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for private maintenance under § 4740.2, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

§ 4740.3–1 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4740.3–2 Disposal of carcasses.

Carcasses shall be disposed of in any customary manner under State sanitary statutes. In no event shall carcasses, or any part thereof, including those in the authorized possession of private parties, be sold or processed into a commercial product.

Subpart 4750—Management on Private Lands

§ 4750.1 Criteria for animals on private lands.

Nothing in these regulations shall preclude a private landowner from allowing wild free-roaming horses and burros to remain on his private lands so long as the animals were not willfully removed, enticed, or retained by him or his agent from the public lands.

§ 4750.2 Maintenance.

Any individual who actively maintains wild free-roaming horses and burros on his private lands shall notify the authorized officer and supply him with a reasonable approximation of their number and location and, when required by the authorized officer, a description of the animals. Thereafter, he shall furnish an annual report updating the information during the month of January. An individual will be considered to be actively maintaining wild free-roaming horses or burros if he takes measures of any kind designed to protect or enhance the welfare of the animals. No person shall maintain such animals except under cooperative agreement between the private landowner and the authorized officer setting forth the management and maintenance requirements including provisions for regulating disposal of excess animals.

§ 4750.3 Removal.

The authorized officer shall remove, as soon as he can make the necessary arrangements, wild free-roaming horses and burros, from private land at the request of the landowner where the private land is enclosed in a "legal fence." A "legal fence" for this purpose is one which complies with State standards and specifications. In "no fence districts" or other areas where the private landowner is not required by State statute to fence the private land to protect it from trespass by domestic livestock, the authorized officer shall, as soon as he can make the necessary arrangements, remove wild free-roaming horses or burros from such private land at the request of the landowner.

Subpart 4760—Enforcement Provisions

§ 4760.1 Arrest.

The Director of the Bureau of Land Management may authorize such employees as he deems necessary to arrest without warrant, any person committing in the presence of the employee a violation of the Act or of these regulations and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4760.2 Penalties.

In accordance with section 8 of the Act (16 U.S.C. 1338), any person who:

(a) Willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the authorized officer, or

(b) Converts a wild free-roaming horse or burro to private use, without authority from the authorized officer, or

(c) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(d) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(e) Sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of the Act, or the remains thereof, or

(f) Willfully violates any provisions of the regulations under Group 4700, shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a U.S. commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

JACK O. HORTON,
Assistant Secretary of the Interior.

MARCH 1, 1976.

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REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Rights-of-Way, Principles and Procedures

43 CFR 2800

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REPRINT
MARCH 8, 1976

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way: General

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Subpart 2800—Rights-of-way, General

AUTHORITY: The provisions of this Subpart 2800 issued under R.S. 161, 453, 2478; 5 U.S.C. 301, 43 U.S.C. 2, 1201, unless otherwise noted.

§ 2800.0–1 Purpose.

(a) This part applies to all rights-of-way covered by §§ 2800.0–1 and 2800.0–5, subparts 2801, 2802, 2811, 2821, 2881, 2882, and parts 2850, 2860, 2870, and 2890.

(b) This does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L.D. 513), with the consent of the agency having jurisdiction or control over the land.

(c) All general right-of-way laws, and the regulations thereunder contained in this subpart, are applicable to Alaska. (See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U.S.C. 23), and 30 Op. Atty. Gen. 387 (1915.)

§ 2800.0–5 Definitions.

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "State Director" means State Director of the Bureau of Land Management, or his authorized representative.

(d) "Authorized officer" means an officer of the proper office for the district in which the lands applied for are situated (see § 1821.2–1 of this chapter).

(e) "Project" means the physical structures in connection with which the right-of-way is approved.

(f) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(g) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

(i) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

Subpart 2801—Nature of Interest

§ 2801.1 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

§ 2801.1–1 In form of easement, license, or permit.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

§ 2801.1–2 Disposals subject to right-of-way.

All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

§ 2801.1–3 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

§ 2801.1–4 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 2801.1–5 Terms and conditions.

An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(c) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the

lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(g) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(j) That he shall at all times keep the authorized officer informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 2801.1–6 Proposed or existing national forest.

Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

§ 2801.1–7 Areas of National Park System.

(a) The act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(b) Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

§ 2801.1–8 Oregon and California Railroad and Coos Bay Wagon Road grant lands.

(a) All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).

(b) The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

§ 2801.1–9 Areas administered by Fish and Wildlife Service.

Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the Fish and Wildlife Service, rights-of-way over or through such lands will be issued by the Director of the Bureau of Sport Fisheries and Wildlife, or his delegate, under the regulations in 50 CFR Part 29.

Subpart 2802—Procedures

§ 2802.1 Application.

§ 2802.1–1 Form.

(a) *Application.* (1) The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in accordance with the provisions of § 1821.2 of this chapter, except that applications for rights-of-way over or through reservation lands administered by the National Park Service shall be filed with the Director of the National Park Service, Washington, D.C. 20240, and applications for rights-of-way over and through reservation lands administered by the Fish and Wildlife Service shall be filed with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife in accordance with 50 CFR 29.21–2. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 2802.1–2 Reimbursement of costs.

(a) (1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321–4347), before the right-of-way or permit will be issued under the regulations of this part.

(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public, except as to rights-of-way or permits under section 28 of the Mineral Leasing Act of 1920, as amended (87 Stat. 576); (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies.

(3) An applicant must submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length	*Payments*
Less than 5 miles	$50 per mile or fraction thereof.
5 to 20 miles	$500.
20 miles and over	$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$250 for each 40 acres or fraction thereof.

(iii) If a project has the features of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph .

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a)(3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a)(3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a)(3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States according to subparagraphs (3) through (7) of this paragraph, except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit, or other means acceptable to the authorized officer, for costs under § 2802.1–2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under § 2802.1–2. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under § 2802.1–2.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2802.1–2 for the entire system; subject, however, to the provisions of subparagraphs (11) through (13) of this paragraph.

(15) The regulations contained in § 2802.1–2 are applicable to all applications for rights-of-way or permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length	*Payment*
Less than 5 miles	$20 per mile or fraction thereof.
5 to 20 miles	$200.
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b)(2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b)(2) and (3) of this section.

§ 2802.1–3 Showing as to organizations required of corporations.

(a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or by-laws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 2802.1–4 Showing as to citizenship required.

(a) *Individuals.* An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) *Association of Individuals.* An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 2802.1–5 Documents which must accompany application.

(a) *Maps.* Each application, other than a reservoir declaratory statement under § 2872.1(a), or an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix B) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(8) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

§ 2802.1–6 Indian lands.

The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 161.

§ 2802.1–7 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference

between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2821, 2822, 2842, 2871, 2872.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 2802.2 Application and use procedure.

§ 2802.2–1 Incomplete application and reports.

(a) Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

(b) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the authorized officer is required to consult with and obtain the consent of such other agency before the application may be granted.

§ 2802.2–2 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence toward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

§ 2802.2–3 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 2802.2–4 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with § 2802.1 wherein the authorized officer's judgment the deviation is substantial.

§ 2802.3 Revocation or cancellation.

§ 2802.3–1 Order of cancellation.

All rights-of-way approved pursuant to this part, except those granted for pipelines pursuant to section 28 of the Act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U.S.C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

§ 2802.3–2 Change in jurisdiction over or disposal of lands.

(a) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(b) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

§ 2802.4 Transfer of right-of-way.

§ 2802.4–1 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a right-of-way or permit incident to a right-of-way acquired under any law, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in accordance with § 2802.1 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of an applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

§ 2802.4–2 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by § 2802.1–2(a)(4), must be accompanied by a nonrefundable payment of $25.

§ 2802.5 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

2800 Appendix A

FORMS FOR DUE PROOFS, AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY]

_____ *of the*
(_____ *Company*)

(Form 2)

STATE OF _____
County of _____, *ss:*

I, _____ do certify that I am the president of the _____ company, and that the following is a true list of the officers of the said company, with the full name and official designation of such, to wit: (here insert the full name and official designation of each officer.)

[SEAL OF COMPANY]

_____
(*President of Company*)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____ _____, Being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said company's line of railroad described as follows: (here describe the line of route as required by section 10), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; and that the survey of the said line is accurately represented on this map and by the accompanying field notes.

_____
_____

Sworn and subscribed to before me this _____ day of _____ 19__.

[SEAL] _____
(*Notary Public*)

(Form 4)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said railroad, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said railroad upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said railroad described as follows: (describe as in Form 3); and that this map has been prepared to be filed in order to obtain the benefits of the act of Congress approved March 8, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." I further certify that the said railroad is to be operated as a common carrier of passengers and freight.

_____
(*President of the* _____ *Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 5)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct) the railroad of the _____ company; that said railroad has been constructed under his supervision as follows: (describe as in section 10), a total length of __ miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__, and that the constructed railroad conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____
_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____
(*Notary Public*)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company; that the railroad described as follows: (describe as in Form 5) was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the premises); that the location of the constructed railroad conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__; and that the company has in all things complied with the requirements of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____
(*President of the* _____ *Company*)

Attest:
[SEAL OF COMPANY]

_____
(*Secretary*)

(Form 7)

STATE OF _____,
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by section 10) an area of __ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19—; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the __ mile to the __ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

_____
_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____
(*Notary Public*)

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of __ acres, and no more, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for station grounds; that the company has occupied no other grounds for similar purposes upon public lands within the section of 10 miles, from the _____ mile to the _____ mile, for which this selection is made; that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States."

[SEAL OF COMPANY]
Attest:

_____
(*President of the* _____ *Company*)

_____
(*Secretary*)

2800 Appendix B

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

FORM

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 2802.1-5(a)(7).

Engineer's Statement

(Form 1)

_____ states he is by
(Name of engineer)
occupation a _____ employed by the _____ to
(Type of engineer) (Company)
make the survey of the _____,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the _____ day of _____ 19 _____, and ending on the _____ day of _____ 19___; and that such survey is accurately represented upon this map.

_____
(Engineer)

Applicant's Certificate

(Form 2)

This is to certify that _____
(Engineer)
who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of _____; and I further certify that the
(Cite statute)
right-of-way herein described is desired for _____.
(State purpose)

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

Forms for Plant Sites Only

See §§ 2861.1(d), 2873.1(c), and 2881.3.

(Form 3)

_____ states that
(Name of engineer)
he is the chief engineer of (or the person employed by) the _____,
(Company)
under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 2872.1(b); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

_____
(Signature of engineer)

(Form 4)

I, _____, do hereby certify
(Applicant) (Company officer)
that I am the _____ of the _____
(Title)
_____; that the survey of the struc-
(Company)
tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of _____, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here described as required by regulation, sec. 2872.1(a) for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the _____ day of _____ 19____, directed the proper officers to present the said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

Forms for Proof of Construction

See section 2802.2.

(Form 5)

_____ states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the _____; that said (canals,
(Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the _____ day of _____ 19____, and completed on the _____ day of _____ 19____; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the _____ day of _____ 19____.

_____
(Signature of engineer)

(Form 6)

I, _____ certify
(Applicant) (Company officer)
that I am the _____ of the _____;
(Title) (Company)
that the (canals, ditches, laterals, and reservoirs) were actually constructed as set forth in the accompanying statement of _____, chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map approved by the Department of the Interior on the _____ day of _____ 19____; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:
_____

Forms for Reservoir Declaratory Statement

(Form 7)

See § 2872.1(a).
Res. D. S.
No. _____
Land Office at _____,
_____ 19__.

I, _____,
(Applicant) (Company officer)
of _____,
(Post office address)
do hereby certify that I am _____
(Title)
of the _____, and on behalf of
(Company)
said company, and under its authority, do hereby apply for the reservation of land in _____ county, State of _____, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952). The location of said reservoir and of the land necessary for its use, is as follows: _____[1] of section _____ in township _____ of range _____ M., containing _____ acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with_____[2]
(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 3 miles) of the said reservoir is as follows:
_____
_____
(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands

See footnotes at end of this Form.

reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of _____ acres in _____ of section _____ in township _____, of range _____ of said lands; the capacity of the reservoir will be _____ gallons, and the dam will be _____ feet high. The source of the water for said reservoir is _____
(Type and location
_____, and there are
of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows:

_____
(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. _____, _____ office, area to be reserved _____ acres.

No. _____, _____ office, area to be reserved _____ acres.

No. _____, _____ office, area to be reserved _____ acres.

No. _____, _____ office, area to be reserved _____ acres.

Total, _____ acres, of which Nos. _____ _____ are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

Office at _____

I, _____, authorizing officer of the office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, $_____ paid.

_____
(Authorized Officer)

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

[2] Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being breed or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

(Form 8)

See § 2872.3.

_____ says that he is the
(Chief engineer)
person who was employed to make the survey of a reservoir covering an area of _____ acres, the initial point of the survey being _____, said
(Described as required by § 2872.3)
reservoir having been constructed upon the _____[1] of section _____, township _____, range _____ M., as proposed by reservoir declaratory statement No. _____, which was filed in the local land office at _____, under the provisions of the
(City)
act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952), that the said survey was made on the _____ day of _____ 19____, that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of _____ gallons of water.

_____
(Signature of engineer)

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

(Form 9)

See § 2872.3.

I, _____, do
(Applicant) (Company officer)
hereby certify that I am the _____
(Title)
of the _____ which filed (or
(Company)
that I am the person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the proposed reservoir has been constructed upon the _____[1] of section _____ township _____, range ____ M., covering an area of _____ acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes and in the manner prescribed by the said act of January, provisions of which have been and will be complied with in all respects.

[SEAL] _____
(Signature of applicant)
_____
(Title)
_____
(Company)

Attest:

_____

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

(Form 10)

See § 2872.4(b).

_____ says
(Applicant) (Company officer)
that he is the _____ of the _____
(Title)
_____ which filed (or that he is the
(Company)
person who filed) reservoir declaratory statement No. _____ in the local land office at _____; that the reservoir con-
(City)
structed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than _____ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952).

[SEAL] _____
(*Signature of applicant*)
_____
(*Title*)
_____
(*Company*)

Attest:

_____

2800 Appendix C

FORMS FOR DUE PROOFS AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR RAILROADS, TRAMWAYS, WAGON ROADS, ETC.

(Form 1)

I, _____, secretary (or president) of the _____ company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction according to the existing laws of the State (or Territory) of _____; and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior under the act of May 14, 1898 (30 Stat. 409), is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company.

[SEAL OF COMPANY] _____
(_____ *of the*
_____ *Company*)

(Form 2)

STATE OF _____,
County of _____, *ss:*

I, _____, do certify that I am the president of the _____ Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each to wit: (Here insert the full name and official designation of each officer).

[SEAL OF COMPANY] _____
(*President of Company*)

(Form 3)

STATE OF _____
County of _____, *ss:*

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the said com-

pany's line of (railroad, tramway, or wagon road) described as follows: (Here describe the line of route as required by paragraph 12), a length of _____ miles, was made by him (or under his direction) as chief engineer of (or as surveyor employed by) the company and under its authority commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said land is accurately represented on this map and by the accompanying field notes; and that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map. (In the case of a tramway or wagon road, add the following: The said line of road does not lie upon nor cross any road or trail in common use for public travel except as shown on this map.)

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____

(*Notary Public*)

(Form 4)

I, _____ do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (railroad, tramway, or wagon road), as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (railroad, tramway, or wagon road) upon the location shown upon this map; that the said survey as represented on this map and by said field notes was adopted by resolution of its board of directors on the _____ day of _____, 19__, as the definite location of the said (railroad, tramway, or wagon road) described as follows: (Describe as in Form 3); that this proposed right of way does not lie within 4 rods of the shore of any navigable waters, except as shown on this map, and that this map has been prepared to be filed in order to obtain the benefits of sections 2 to 9, inclusive, of the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."[2] I further certify that the said (railroad or tramway) is to be used as a common carrier of freight and passengers.

_____

(*President of the _____ Company*)

_____

(*Secretary*)

ATTEST:

[SEAL OF COMPANY]

[2] The last sentence to be omitted from applications for wagon-road right of way.

(Form 5)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says that he is the chief engineer of (or was employed to construct the railroad, tramway, or wagon road of) the _____ company; that said (railroad, tramway, or wagon road) has been constructed under his supervision, as follows: (describe as in paragraph 12) a total length of _____ miles; that construction was commenced on the _____ day of _____, 19__, and completed on the _____ day of _____, 19__; that the constructed (railroad, tramway, or wagon road) conforms to the map and field notes which received the approval of the Secretary of the Interior on the _____ day of _____, 19__.

_____

_____

Sworn and subscribed to before me this _____ day of _____, 19__.

[SEAL] _____

(*Notary Public*)

(Form 6)

I, _____, do hereby certify that I am the president of the _____ company, that the (railroad, tramway, or wagon road) described as follows: (describe as in Form 5), was actually constructed as set forth in the accompanying affidavit of _____, chief engineer (or the person employed by the company in the process); that the location of the constructed (railroad, tramway, or wagon road) conforms to the map and field notes approved by the Secretary of the Interior on the _____ day of _____, 19__, and that the company has in all things complied with the requirements of sections 2 to 9, inclusive of the act of Congress approved May 24, 1808, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."

_____

(*President of the _____ Company*)

_____

(*Secretary*)

Attest:

[SEAL OF COMPANY]

(Form 7)

STATE OF _____,

County of _____, ss:

_____, being duly sworn, says he is the chief engineer of (or is the person employed to make the survey by) the _____ company; that the survey of the tract described as follows: (here describe as required by paragraph 12) an area of _____ acres, and no more, was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company), and under its authority, commencing on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__; that the survey of the said tract is accurately represented on this plat and by the accompanying field notes; (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ mile to the _____ mile, for which this selection is made);[5] that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map, and that to the best of my knowledge and belief there is no settlement or other claim along the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

[SEAL] _____

(Notary Public)

[5] This clause is to be omitted in applications for terminal or junction grounds

the shore of any navigable waters upon land within 80 rods of any point of this tract except as shown on this map.

(Form 8)

I, _____, do hereby certify that I am president of the _____ company; that _____, who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the tract described as follows: (here describe as in Form 7) an area of _____ acres, and no more, was made by him as chief engineer of (or as surveyor employed to make the survey by) the said company; that the said survey, as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the said survey, as represented on this map and by said field notes, was adopted by resolution of its board on the _____ day of _____, 19__, as the definite location of said tract for (station, terminal, or junction grounds), (that the company has occupied no other grounds for similar purposes upon public lands within the section of [5 or 10] miles, from the _____ miles to the _____ mile, for which this selection is made); that, in his belief, the said grounds are actually and to their entire extent required by the company for the necessary uses contemplated by the act of Congress approved May 14, 1898, entitled "An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes"; that the said tract does not lie within 4 rods of the shore of any navigable waters except as shown on this map; and that, to the best of my knowledge and belief, there is no settlement or other claim along

_____

(*President of the _____ Company*)

Attest:

[SEAL OF COMPANY] _____

(*Secretary*)

This Circular replaces Circulars 2322, 2338, 2344, and 2368.

☆U.S. Government Printing Office: 1976-678-038/315 Region 8

This Circular replaces Circulars 2322, 2323, 2324, and 2325.

Legal Library

Title 43—Public Land, Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2385]

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
1976 MAY 10 AM 10: 0
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PART 5400—SALE OF FOREST PRODUCTS: GENERAL

PART 5420—PREPARATION FOR SALE

Export of Timber From Federal Lands

Subpart 5400—Sales of Forest Products; General

Group 5400 of Chapter II, Title 43, of the Code of Federal Regulations is amended as follows:

1. Section 5400.0–3 (c) is revised to read as follows:

§ 5400.0–3 Authority.

* * * * *

(c) The Department of the Interior and Related Agencies Appropriation Act, 1976 (PL 94–165) prohibits the use of funds appropriated thereunder for sale of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to specific quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic lumber and plywood manufacturing needs.

* * * * *

2. In § 5400.0–5 a new paragraph (n) is added and paragraphs (k) and (l) are revised to read as follows:

§ 5400.0–5 Definitions.

* * * * *

(k) "Unprocessed timber" means (1) any logs except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs; (2) cants or squares to be subsequently remanufactured exceeding eight and three-quarters (8¾) inches in thickness; (3) split or round bolts, or other roundwood not processed to standards and specifications suitable for end product use.

(l) "Federal lands" means all lands administered by the Department of the Interior west of the 100th meridian in the contiguous 48 States with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

* * * * *

(n) "Substitution" means the purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twelve (12) months of the sale of export by the same purchaser of a greater volume of his private timber than has been his historic pattern during the preceding twelve (12) months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes.

3. § 5400.0–7(a) is revised to read as follows:

§ 5400.0–7 Public hearings to determine surplus quantities and species of unprocessed timber.

(a) Public hearings will be held when authorized by the Director to seek advice and counsel as to the specific quantities of grades and species of unprocessed timber surplus to the needs of domestic users and processors. Such species and quantities thereby determined to be surplus by the Secretary, may be designated as available for export by the Secretary.

* * * * *

Subpart 5401—Advertised Sales; General

4. § 5401.0–6(b) is revised to read as follows:

§ 5401.0–6 Policy.

* * * * *

(b) All competitive sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber.

Subpart 5402—Other Than Advertised Sales; General

5. § 5402.0–6(d) is revised to read as follows:

§ 5402.0–6 Policy.

* * * * *

(d) All negotiated sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber. Timber purchased for right-of-way purposes will not be subject to substitution restrictions.

6. § 5424.0–6 is revised to read as follows:

§ 5424.0–6 Policy.

(a) All sales shall be made on contract forms approved by the Director. The contract form and any additional provisions shall be made available for inspection by prospective bidders during the advertising period.

(b) The Authorized Officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution.

(c) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each sale contract shall include provisions that prohibit: (1) the export of any unprocessed timber harvested from the area under contract; (2) the use of any timber of sawlog or peeler grades sold thereunder as a substitute for timber from private lands which is exported by the purchaser or sold by the purchaser for export.

Dated: March 17, 1976.

JACK HORTON,
Assistant Secretary of the Interior.

[FR Doc.76–8561 Filed 3–26–76;8:45 am]

Published in 41 F.R. 12658, March 26, 1976 - Effective April 1, 1976.

Circular Distribution List

Subpart 5400—Sales of Forest Products; General

Group 5400 of Chapter II, Title 43, of the Code of Federal Regulations is amended as follows:

1. Section 5400.0-3 (c) is revised to read as follows:

§ 5400.0-3 Authority.

* * * * *

(c) The Department of the Interior and Related Agencies Appropriation Act, 1976 (P.L. 94-165), prohibits the use of funds appropriated thereunder for sale of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to sawn quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic needs, such sales contract shall include provisions that prohibit: (1) the export of any unprocessed timber harvested from the area under contract; (2) the use of any timber of sawlog or peeler grades sold thereunder in a substitute for timber from private lands which is exported by the purchaser or sold by the purchaser for export.

* * * * *

2. A new paragraph (f) and (1) are revised to read as follows:

§ 5400.0-5 Definitions.

* * * * *

(e) "Unprocessed timber" means (1) any logs except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs; (2) cants or squares to be subsequently remanufactured exceeding eight and three-quarters (8¾) inches in thickness; (3) split or round poles or other round-wood not processed to standards and specifications suitable for end product use.

(f) "Federal lands" means all lands administered by the Department of the Interior west of the 100th meridian in the contiguous 48 States with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

* * * * *

(n) "Substitution" means the purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twelve (12) months of the sale of exports by the same purchaser or a greater volume of his private timber than has been his historic pattern during the preceding twelve (12) months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes.

3. § 5400.0-7(a) is revised to read as follows:

§ 5400.0-7 Public hearings to determine surplus quantities and species of unprocessed timber.

(a) Public hearings will be held when authorized by the Director to seek advice and counsel as to the specific quantities of grades and species of unprocessed timber surplus to the needs of domestic users and processors. Such species and quantities thereby determined to be surplus by the Secretary, may be designated as available for exports by the Secretary.

* * * * *

Subpart 5401—Advertised Sales; General

4. § 5401.0-6(b) is revised to read as follows:

§ 5401.0-6 Policy.

* * * * *

(b) All competitive sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber.

Subpart 5402—Other Than Advertised Sales; General

5. § 5402.0-6(d) is revised to read as follows:

§ 5402.0-6 Policy.

* * * * *

(d) All negotiated sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber. Timber purchased for right-of-way purposes will not be subject to substitution restrictions.

6. § 5424.0-6 is revised to read as follows:

§ 5424.0-6 Policy.

(a) All sales shall be made on contract forms approved by the Director. The contract form and any additional provisions shall be made available for inspection by prospective bidders during the advertising period.

(b) The Authorized Officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution.

(c) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, such sale contract shall include provisions that prohibit: (1) the export of any unprocessed timber harvested from the area under contract; (2) the use of any timber of sawlog or peeler grades sold thereunder in a substitute for timber from private lands which is exported by the purchaser or sold by the purchaser for export.

Dated: March 17, 1976.

Jack Ihanes,
Assistant Secretary
of the Interior.

[FR Doc.76-8281 Filed 3-26-76;8:45 am]

Published in 41 F.R. 12658, March 26, 1976 - Effective April 1, 1976.

Circular Distribution List

Legal Library

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2386]

PART 1780—COOPERATIVE RELATIONS

Structure of National Advisory Board

Section 1784.5(a) is amended to read as follows:

§ 1784.5 National Advisory Boards.

(a) * * *

(2) *Membership.* Each State Multiple Use Advisory Board shall select from its members, at a meeting of each new term, one member to represent livestock on the National Advisory Board. Additionally, each State Multiple Use Advisory Board shall select from its members, at a meeting of each new term, one member to represent wildlife as follows: Alaska, each year; Arizona, Colorado, Idaho, Montana, and Nevada 1975–1976 and 1979–1980; California, New Mexico, Oregon, Utah, and Wyoming 1977–1978 and 1981–1982, established rotation continues thereafter. The State Directors for the Bureau of Land Management shall submit to the Director of the Bureau of Land Management a list of nominees selected from nonlivestock and nonwildlife interests in their States. From this list and from other sources as he may determine, the Secretary of the Interior shall appoint 20 members to the National Advisory Board as follows: 1 representative from the State of Washington, 1 representative from the State of Alaska, 2 mining representatives, 2 forestry representatives, 2 leasable mineral representatives, 3 outdoor recreation representatives, 2 urban-suburban representatives (including real estate development), 1 environmental quality representative, 1 public information representative, 2 county government representatives, 1 State government representative, 1 soil and water conservation representative, and 1 public utilities representative.

MARCH 31, 1976.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

[FR Doc.76-9903 Filed 4-6-76;8:45 am]

Published in 41 F.R. 14734, April 7, 1976 - Effective April 12, 1976.

Circular Distribution List

Published in 41 F.R. 14734, April 7, 1976 - Effective April 12, 1976.

Circular Distribution List

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
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CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2387]

KING RANGE NATIONAL CONSERVATION AREA CALIFORNIA

Acquisition, Exchanges, Management of Locatable Mineral Resources

PART 2110—GIFTS

1. A new paragraph 2110.0–3(c) is added to read as follows:

§ 2110.0–3 Authority.

* * * * *

(c) Section 5 of the King Range Conservation Area Act (16 U.S.C. 460y) authorizes the Secretary to accept land or interest in land within the area by donation.

2. A new Part 2130 is added to read as follows:

PART 2130—ACQUISITION OF LANDS OR INTERESTS IN LANDS BY PURCHASE OR CONDEMNATION

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation

Sec.
2130.0–3 Authority
2130.1 [Reserved]
2130.2 [Reserved]
2130.3 [Reserved]
2130.4 Acquisition of lands in King Range Conservation Area
2130.4–1 Purchase

Subpart 2137—Condemnation of Lands or Interests in Lands

Sec.
2137.0–7 Appraisals
2137.0–8 [Reserved]
2137.0–9 Reasons for Condemnation

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation—General

§ 2130.0–3 Authority.

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area and authorizes the Secretary of the Interior to acquire by purchase any land or interest in land within the area pursuant to the Act.

§ 2130.1 [Reserved]

§ 2130.2 [Reserved]

§ 2130.3 [Reserved]

§ 2130.4 Acquisition of Lands in King Range Conservation Area.

§ 2130.4–1 Purchase.

If the Secretary of the Interior determines that the acquisition of land or interest in land is desirable for consolidation of public lands within the Area he may acquire land or interest in land within the King Range National Conservation Area by purchase with donated funds appropriated specifically for that purpose.

Subpart 2137—Condemnation of Lands or Interests in Lands

§ 2137.0–7 Appraisals.

Prior to initiation of condemnation proceedings, the property will be appraised pursuant to approved Bureau procedures to determine its fair market value and an offer made to purchase it at that appraised price.

§ 2137.0–8 [Reserved]

§ 2137.0–9 Reasons for condemnation.

Incompatible use. The power of eminent domain will be exercised only if the Secretary finds that the use to which the land is being put is incompatible with the purposes of the King Range National Conservation Area Act or the management plan prepared in accordance with the Act, and if efforts to acquire the land by other means have failed.

PART 2270—MISCELLANEOUS EXCHANGES

3. A new Subpart 2274 is added to read:

Subpart 2274—National Conservaiton Area Exchanges

§ 2274.0–3 Authority.

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area in the State of California and authorizes the Secretary of the Interior to acquire land or interests in land by exchange under the Act.

§ 2274.1 Procedures.

(a) In making exchanges within the King Range National Conservation Area, the authorized officer may accept title to non-Federal land or interest in land within the Area defined in 16 U.S.C. 460y–8, or additions made thereto, and convey to the grantor of such land or interest in land an equal value of surveyed, unappropriated and unreserved public land or interest in land, in accordance with the following:

(1) The authorized officer shall have determined that the exchange is in the public interest.

(2) The public lands offered in exchange be in Humboldt and/or Mendocino County, California, and shall have been classified by the authorized officer for exchange.

(3) If the value of the offered lands or interests in land is at least equal to two-thirds of the value of the public land or interests in land, the exchange may be completed by payment of the difference in value to the Bureau of Land Management or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference in value in order to assure that additional lands acceptable to the authorized officer and at least equal to the difference in value will be conveyed to the Government within a definite time to be specified by the authorized officer. If the value of the public lands offered in exchange for non-Federal lands or interests in non-Federal lands is at least equal to two-thirds of the value of the non-Federal lands, the exchange may be completed upon payment by the authorized officer of the difference in value.

(b) Either party to an exchange may reserve minerals, easements, or rights of use either for its own benefits, for the benefit of third parties, or for the benefit of the general public. Any such reservation, whether in lands conveyed to or by the United States, shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the authorized officer. When minerals are reserved in lands conveyed by the United States, any person who prospects for or acquires the right to mine and remove such reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations.

Prior to entering lands in non-Federal ownership, such person shall either obtain the surface owner's written consent or file with the authorized officer a good and sufficient bond or undertaking to the United States in an amount acceptable to the authorized officer for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction. Where written consent is not obtained, a letter request shall be filed with the authorized officer for a determination of the amount of the bond or undertaking. A copy of such request will be served on the surface owner or owners by certified mail.

(c) Upon acceptance of title, any lands or interests in lands acquired by the United States by exchange under the authority of Section 5 of the Act of October 21, 1970, shall become public lands, and shall become a part of the King Range National Conservation Area subject to all

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the laws and regulations applicable thereto without further order of the authorized officer.

(d) Any exchange transaction will be handled in a manner consistent with the authorizing law and regulations in Part 2200 of this Subchapter.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

4. Part 3820 is amended to add a new Subpart 3827 to read as follows:

Subpart 3827—King Range National Conservation Area

Sec.	
3827.0–1	Purpose.
3827.0–3	Authority.
3827.0–5	Definitions.
3827.0–7	Scope.
3827.1	Plan of operation.
3827.1–1	Approval; access; inspection.
3827.2	Requirements for environmental protection.
3827.3	Performance bonds.
3827.4	Use of mining claims restricted surface resources.
3827.5	Noncompliance.
3827.6	Trespass.

Subpart 3827—King Range National Conservation Area

§ 3827.0–1 Purpose.

These regulations set forth rules and procedures for prospecting, location of a mining claim, annual assessment work, exploration and development and other mining operations on lands within the Area so as to minimize adverse environmental impacts, protect the scenic and esthetic values against undue impairment and assure against pollution of the streams and waters within the Area.

§ 3827.0–3 Authority.

(a) The Act of October 21, 1970, (16 U.S.C. 460–y) affirms the applicability of the United States mining laws to the federally owned lands within the Area. It also authorizes the Secretary of the Interior to prescribe regulations under which activities under the mining laws and patents issued pursuant to it shall be subject.

(b) Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) authorizes and directs that, to the fullest extent possible, the policies, regulations and laws of the United States shall be interpreted and administered in accordance with the policies of that Act.

§ 3827.0–5 Definitions.

(a) The term "Area" in this subpart means those lands and boundaries described in Vol. 39, No. 189, FR p. 34693 of September 27, 1974 which the Secretary of the Interior established as the King Range National Conservation Area and any additions thereto.

(b) *"Mining claim"* as used in this subpart means any unpatented claim, millsite, or unpatented tunnel site authorized by the Mining Law of 1872, as amended, (30 U.S.C. 22 et seq.).

(c) *"Casual use"* as used in this subpart means activity which is limited to practices which ordinarily lead to only negligible disturbance or damage to lands, resources, and improvements, and does not threaten public health and safety. For example, activities which do not involve cutting of vegetation, use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use".

(d) *"Plan of operation"* as used in this subpart means an application for authorization containing information called for in this subpart to conduct activities under the United States mining laws.

(e) *"Primitive Areas"*. Natural, wild and undeveloped areas and settings essentially removed from the effects of civilization where the natural environment has not been disturbed by commercial utilization and the areas are without mechanized transportation.

§ 3827.0–7 Scope.

(a) All prospecting commenced or conducted, and all mining claims located within the boundaries of the area after October 21, 1970, are subject to the regulations in this subpart.

(b) Rights of owners of mining claims valid on October 21, 1970, and thereafter maintained as valid mining claims are not limited or restricted by the regulations of this subpart.

(c) Any patent issued on any mining claim located after October 21, 1970, shall continue to be subject to the regulations in this subpart. This provision shall be incorporated in such patent.

§ 3827.1 Plan of operation.

(a) Prior to the commencement of any prospecting, location of a mining claim, annual assessment work, exploration and development or other mining operations any of which would involve more than casual use as determined by the Secretary of the Interior within the Area defined above, a plan of operation must be filed and approved by the authorized officer.

(b) The plan of operation shall include:

(1) A copy of all notices of mining location and notices of assessment work of the mining claims involved in the plan;

(2) The name and address of the operator(s) and the owner(s) if operations are to be conducted by other than the owner(s). If any of the foregoing are other than individual proprietors, the names and addresses of the principal officers of the business entity and the person(s) designated to represent such entity with the Department of the Interior shall be included;

(3) A description sufficient to identify the area or areas on the ground within which the operations are being conducted or are to be conducted, and the estimated period of activity;

(4) A map or sketch of access routes used or to be used and the description of the means of transportation used or to be used, submitted in compliance with the provisions of § 3827.1–2(d) of this subpart:

(5) A map or sketch showing the location of existing and proposed roads within mining claims, a description of the type and standard of such existing and proposed roads, and a description of the means of transportation used or to be used;

(6) A list of equipment and a description of facilities used or to be used in the operations;

(7) A description of the methods of operation used or to be used;

(8) A map or sketch showing the location and size of areas upon which it is expected vegetation or soil will be distributed;

(9) A description of the effects the operations are having or may have upon the environment and forest resources; and

(10) A description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be taken to meet the requirements of § 3827.2 of this Subpart.

(c) The plan of operations shall cover the requirements set forth in paragraph (a) above for the entire operation for the full estimated period of activity. However, if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any operations not covered by the initial plan.

(d) At any time during operations under an initial or supplemental plan of operation if there are indications of significant adverse impacts that were not anticipated at the time the plan was prepared and approved, the authorized officer may, after discussion with the operator, serve written notice describing the changed conditions or unforeseen environmental circumstances occurring or about to occur and require the operators to submit a proposed modification to the initial or supplemental plan detailing the means of minimizing unforeseen significant adverse environmental impacts. The decision of the authorized officer to modify a plan is subject to appeal, in accordance with 43 C.F.R. 4.411.

(e) Determination as to whether an environmental impact statement will be prepared will be on a case-by-case basis and will follow the Guidelines of the Council on Environmental Quality (40 CFR 1500), with special consideration given to lands identified as "primitive" under the King Range Management Program.

(f) The existence of an approved plan of operation for prospecting or location of a claim does not preclude the authorized officer from denying approval of plans for subsequent exploration or development of that claim upon a finding that such operation will unduly impair environmental values of the area.

§ 3827.1–1 Approval; access; inspection.

(a) *Review of plan.* No operations, except those determined to be "casual use" as defined herein, shall be conducted unless they are in accordance with an approved plan of operation. A proposed plan of operation shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. Within thirty (30) days of such receipt, the authorized officer shall:

(1) Notify the operator that the plan of operation is approved or rejected; or

(2) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed. However, days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(4) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 3827.1–1(d) hereof.

(b) Appeal from rejection. Any rejection under § 3827.1–1(a)(1) hereof shall afford a right of appeal in accordance with 43 CFR 4.411.

(c) *Supplemental plan.* A supplemental plan or plans of operations provided for in § 3827.1–1(b) of this Subpart and a modification of an initial or supplemental plan as provided for in § 3827.1–1(c) of this Subpart shall be subject to approval in the same manner as the initial plan of operations.

(d) *Access.* An operator shall be entitled to access in connection with operations but no road or other means of access, including but not limited to landing areas for aircraft, shall be constructed or improved until the operator has received authorization in writing from the authorized officer. Application for such access shall be filed in the appropriate district office of the Bureau of Land Management and shall include a description of the type and standard of the proposed means of access, a plat showing the proposed route of access, and a description of the means of transportation to be used. Authorization for such access shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest resources, including, but not limited to, vegetative screening and other measures to protect scenic values and to insure against erosion and water or air pollution. Any access granted on lands identified as "primitive areas" under the King Range Management Program shall be limited to non-mechanized means, wherever necessary in the discretion of the Secretary, to preserve environmental, primitive and scenic values.

(e) *Inspection.* Operations are subject to inspection to determine if the operator is complying with the regulations in this part and an approved plan of operations.

§ 3827.2 Requirements for environmental protection.

All plans of operations shall contain appropriate terms and conditions for the protection of the environment including but not limited to stipulations covering air quality, water quality, solid wastes, scenic values, fishery habitat, roads, and surface reclamation and rehabilitation.

§ 3827.3 Performance bonds.

(a) To assure that an operator will faithfully comply with the regulations in this part and adhere to an approved plan of operations, a performance bond in a minimum amount of $100 will be required prior to approval of each plan of operations except where only prospecting is involved and there is no surface disturbance. In lieu of a performance bond, the operator may deposit into a Federal depository, as directed by the Bureau of Land Management, and maintain therein, cash in an amount equal to the required amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the nature of the reclamation and restoration requirements and the estimated costs of reclamation and restoration in the event that the operator forfeits his performance bond. This consideration will include (1) the size of the operations; (2) the estimated damage to the environment and the Area if the operator fails to comply with the regulations in this part or fails to adhere to the approved plan of operations; (3) the estimated cost of stabilizing, rehabilitating and restoring the area of operations; and (4) the type and amount of access to be constructed in connection with operations.

(c) In the event that an initial plan of operations is supplemented or modified in accordance with § 3827.1–1 (b) and (c) of this subpart, the authorized officer will review the initial performance bond for adequacy and, if necessary, will adjust the performance bond to conform to the plan of operations as supplemented or modified.

(d) When the operations have been conducted and completed in accordance with the regulations in this subpart and the approved plan of operations, the authorized officer will notify the operator that the period of liability under the bond has terminated.

§ 3827.4 Use of mining claims restricted, surface resources.

Restrictions on the use of mining claims in addition to the regulations in this subpart are provided in 30 U.S.C. 611 and the regulations in 43 CFR 3712.1(a).

§ 3827.5 Noncompliance.

If an operator fails to comply with the regulations or his approved plan of operations, the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action necessary to comply and the time within which such action must be completed, generally not to exceed thirty (30) days. The authorized officer shall require immediate suspension of operations if noncompliance is causing environmental damage.

§ 3827.6 Trespass.

Any mining operations conducted on lands within the Area without an approved plan of operations shall constitute a trespass.

Dated: April 7, 1976.

JACK HORTON,
Assistant Secretary of the Interior.

[FR Doc.76–10859 Filed 4–14–76;8:45 am]

GPO 835-921

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2388]

PART 2710—PUBLIC SALE—R.S. 2455: GENERAL

Lands Subject to Sale

1. Section 2710.0–8(b) is amended as follows:

§ 2710.0–8 Lands subject to sale.

* * * * *

(b) The Act also authorizes the Secretary in his discretion, upon application of any person who owns land or holds a valid entry adjoining such tract, to order into market and sell at public auction for not less than their appraised value any legal subdivision or contiguous legal subdivisions of public land not exceeding 760 acres, the greater part of each of which subdivisions is mountainous or too rough for cultivation. An applicant may file any number of applications, provided the land to be purchased thereunder, plus land previously purchased under this paragraph (b) does not exceed 760 acres.

Dated: April 15, 1976.

CHRIS FARRAND,
Acting Assistant Secretary of the Interior.

[FR Doc.76–11601 Filed 4–21–76;8:45 am]

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Circular Distribution List

Circular No. 2389

REGULATIONS PERTAINING TO:

DISPOSITION; GRANTS

Alaska Native Selections

43 CFR 2650

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
May 7, 1976

Circular No. 2289

REGULATIONS PERTAINING TO:

DISPOSITION; GRANTS

Alaska Native Selections

43 CFR 2650

Revision
May 1, 1976

Subpart 2650—Alaska Native Selections—Generally

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Subpart 2650—Alaska Native Selections—Generally

§ 2650.0–1 Purpose.

The purpose of the regulations in this part is to provide procedures for orderly and timely implementation of those provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) which pertain to selections of lands and interests in lands in satisfaction of the land selections conferred by said act upon Alaska Natives and Alaska Native corporations.

§ 2650.0–2 Objectives.

The program of the Secretary is to implement such provisions in keeping with the congressional declaration of policy that the settlement of the Natives' aboriginal land claims be fair and just and that it be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation and with maximum participation by Natives in decisions affecting their rights and property.

§ 2650.0–3 Authority.

Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, authorizes the Secretary of the Interior to issue and publish in the FEDERAL REGISTER, pursuant to the Administrative Procedure Act (5 U.S.C. 551, et seq.), such regulations as may be necessary to carry out the purposes of the act.

§ 2650.0–5 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) and any amendments thereto.

(b) "Secretary" means the Secretary of the Interior or his authorized delegate.

(c) "Native" means a Native as defined in section 3(b) of the act.

(d) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska, as defined in section 3(c) of the act.

(e) "Village corporation" means a profit or nonprofit Alaska Native village corporation which is eligible under § 2651.2 of this chapter to select land and receive benefits under the act, and is organized under the laws of the State of Alaska in accordance with the provisions of section 8 of the act.

(f) "Regional corporation" means an Alaska Native regional corporation organized under the laws of the State of Alaska in accordance with the provisions of section 7 of the act.

(g) "Public lands" means all Federal lands and interests in lands located in Alaska (including the beds of all nonnavigable bodies of water), except:

(1) The smallest practicable tract, as determined by the Secretary, enclosing land actually used, but not necessarily having improvements thereon, in connection with the administration of a Federal installation; and,

(2) Land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341; 77 Stat. 223; 48 U.S.C. ch. 2), or identified for selection by the State prior to January 17, 1969, except as provided in § 2651.4(a)(1) of this chapter.

(h) "Interim conveyance" as used in these regulations means the conveyance granting to the recipient legal title to unsurveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law, subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land.

(i) "Patent" as used in these regulations means the original conveyance granting legal title to the recipient to surveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law; or the document issued after approval of the survey by the Bureau of Land Management, to confirm the boundary description of the unsurveyed conveyed lands.

(j) "Conveyance" as used in these regulations means the transfer of title pursuant to the provisions of the act whether by interim conveyance or patent, whichever occurs first.

(k) "National Wildlife Refuge System" means all lands, waters, and interests therein administered on December 18, 1971, by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, as provided in the act of October 15, 1966, 80 Stat. 927, as amended by the act of July 18, 1968, 82 Stat. 359 (16 U.S.C. 668dd).

(l) "Protraction diagram" means the approved diagram of the Bureau of Land Management mathematical plan for extending the public land surveys and does not constitute an official Bureau of Land Management survey, and, in the absence of an approved diagram of the Bureau of Land Management, includes the State of Alaska protraction diagrams which have been authenticated by the Bureau of Land Management.

(m) "Date of filing" shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office.

§ 2650.0–7 References.

(a) Native enrollment procedures are contained in 25 CFR 43h.

(b) Withdrawal procedures are contained in part 2300 of this chapter.

(c) Application procedures are contained in subpart 1821 of this chapter.

(d) Appeals procedures are contained in 43 CFR Part 4, Subpart J.

(e) Mineral patent application procedures are contained in part 3860 of this chapter.

§ 2650.0–8 Waiver.

The Secretary may, in his discretion, waive any nonstatutory requirement of these regulations. When the rights of third parties will not be impaired, and when rapid, certain settlement of the claims of Natives will be assisted, minor procedural and technical errors should be waived.

§ 2650.1 Provisions for interim administration.

(a)(1) Prior to any conveyance under the act, all public lands withdrawn pursuant to sections 11, 14, and 16, or covered by section 19 of the act, shall be administered under applicable laws and regulations by the Secretary of the Interior, or by the Secretary of Agriculture in the case of national forest lands, as provided by section 22(i) of the act. The authority of the Secretary of the Interior and of the Secretary of Agriculture to make contracts and to issue leases, permits, rights-of-way, or easements is not impaired by the withdrawals.

(2)(i) Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in subdivision (ii) of this subparagraph.

(ii) Prior to making contracts, or issuing leases, permits, rights-of-way, or easements on lands subject to election pursuant to section 19(b) of the act, the Secretary shall obtain the consent of the representatives of the Natives living on those lands.

(b) As provided in section 17(d)(3) of the act, any lands withdrawn pursuant to section 17(d) shall be subject to administration by the Secretary under applicable laws and regulations and his authority to make contracts, and to issue leases, permits, rights-of-way, or easements shall not be impaired by the with-

drawal. To the extent that any such land is also subject to the provisions of paragraph (a) of this section, the provisions of that subsection shall govern.

(c) As provided in section 21(e) of the act, so long as there are no substantial revenues from real property interests conveyed pursuant to this act and the lands are not subject to State and local real property taxes, such lands shall continue to receive forest fire protection services from the United States at no cost. The Secretary will promulgate criteria, after consultation with the concerned Native corporations and the State of Alaska, for determining when substantial reveunes are accruing as to lands for which forest fire protection services are furnished by the Department of the Interior and no discontinuance of such service will be ordered by the Secretary unless he finds, after notice and opportunity for submission of views, that such discontinuance is in conformity with the criteria.

§ 2650.2 Application procedures for land selections.

(a) Applications for land selections must be filed on forms approved by the Director, Bureau of Land Management. Applications must be filed in accordance with subpart 1821 of this chapter.

(b) Each regional corporation shall submit with its initial application under this section a copy of the resolution authorizing the individual filing the application to do so.

(c) Each village corporation under subpart 2651 of this chapter must submit with its initial application under this section a certificate of incorporation, evidence of approval of its articles of incorporation by the regional corporation for that region, and a copy of the authorization of the individual filing the application to do so.

(d) (1) Regional and village corporations authorized by the act subsequently filing additional or amendatory applications need only refer to the serial number of the initial filing.

(2) Any change of the officer authorized to act for any corporation in the matter of land selections should be promptly submitted to the appropriate office of the Bureau of Land Management.

(e) (1) If the lands applied for are surveyed, the legal description of the lands in accordance with the official plats of survey shall be used.

(2) If the lands applied for are unsurveyed, they shall be described by protraction diagrams.

(3) If the lands applied for are not surveyed and are not covered by protraction diagrams, they must be described by metes and bounds commencing at a readily identifiable topographic feature, such as a mountain peak, mouth of a stream, ect., or a monumented point of known position, such as a triangulation station, and the description must be accompanied by a topographic map delineating the boundary of the area applied for.

(4) Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have been published, these maps shall be used to portray and describe the lands applied for. Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have not been published, then the 1:250,000 U.S.G.S. quadrangle maps with the protraction diagrams plotted thereon shall be used.

(5) If the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling.

(f) The selected areas may be adjusted by the Secretary with the consent of the applicant and amendment of the application by the applicant, provided that the adjustment will not create an excess over the selection entitlement.

§ 2650.3 Lawful entries, lawful settlements, and mining claims.

§ 2650.3–1 Lawful entries and lawful settlements.

(a) Pursuant to sections 14(g) and 22(b) of the act, all conveyances issued under the act shall exclude any lawful entries or entries which have been perfected under, or are being maintained in compliance with, laws leading to the acquisition of title, but shall include land subject to valid existing rights of a temporary or limited nature such as those created by leases (including leases issued under section 6(g) of the Alaska Statehood Act), contracts, permits, rights-of-way, or easements.

(b) The right of use and occupancy of persons who initiated lawful settlement or entry of land, prior to August 31, 1971, is protected: *Provided,* That:

(1) Occupancy has been or is being maintained in accordance with the appropriate public land law, and

(2) Settlement or entry was not in violation of Public Land Order No. 4582, as amended. Any person who entered or settled upon land in violation of that public land order has gained no rights.

(c) In the event land excluded from conveyance under paragraph (a) of this section reverts to the United States, the grantee or his successor in interest shall be afforded an opportunity to acquire such land by exchange pursuant to section 22(f) of the act.

§ 2650.3–2 Mining claims.

(a) *Possessory rights.* Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any unpatented mining claim may be contested by the United States, the grantee of the United States or its successor in interest, or by any person who may initiate a private contest. Contest proceedings and appeals therefrom shall be to the Interior Board of Land Appeals.

(b) *Patent requirements met.*—An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976, on lands conveyed to village or regional corporations.

(1) Upon a showing that a mineral survey cannot be completed by December 18, 1976, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, will constitute an acceptable mineral patent application, provided all applicable requirements under the general mining laws have been met.

(2) The failure of an applicant to prosecute diligently his application for mineral patent to completion will result in the loss of benefits afforded by section 22(c) of the act.

(3) The appropriate office of the Bureau of Land Management shall give notice of the filing of an application under this section to the village or regional corporation which has selection rights in the land covered by the application.

(c) *Patent requirements not met.*—Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

§ 2650.4 Conveyance reservations.

§ 2650.4–1 Existing rights and contracts.

Any conveyance issued for surface and subsurface rights under this act will be subject to any lease, contract, permit, right-of-way, or easement and the rights of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted him.

§ 2650.4–2 Succession of interest.

Upon issuance of any conveyance under this authority, the grantee thereunder shall succeed and become entitled to any and all interests of the State of Alaska or of the United States as lessor, contractor, permitter, or grantor, in any such lease, contract, permit, right-of-way, or easement covering the estate conveyed, subject to the provisions of section 14(g) of the act.

§ 2650.4–3 Administration.

Leases, contracts, permits, rights-of-way, or easements granted prior to the issuance of any conveyance under this authority shall continue to be administered by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a lease, contract, permit, right-of-way, or easement, unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way or easement, or waive any right or benefit belonging to the grantee until he has notified the grantee and allowed him an opportunity to present his views.

§ 2650.4–4 Revenues [Reserved]

§ 2650.4–5 National forest lands.

Every conveyance which includes lands within the boundaries of a national forest shall, as to such lands, contain reservations that:

(a) Until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

(b) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands.

§ 2650.4–6 National wildlife refuge system lands.

(a) Every conveyance which includes lands within the national wildlife refuge system shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the village corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the village corporation does not consummate the sale in accordance with the notice to the United States

(b) Every conveyance which covers lands lying within the boundaries of a national wildlife refuge in existence on December 18, 1971, shall provide that the lands shall remain subject to the laws and regulations governing use and development of such refuge so long as such lands remain in the refuge. Regulations governing use and development of refuge lands conveyed pursuant to section 14 shall permit such uses that will not materially impair the values for which the refuge was established.

§ 2650.4–7 Public easements.

(a) Prior to reserving any public easements under section 17(b) of the act, the concerned village and regional corporations shall be afforded notice and opportunity for submission of views. If the Secretary determines that a public easement should be reserved in any conveyance, the reasons for that determination will be provided in writing, upon request of the grantee.

(b) (1) A public easement shall be reserved only if it is specific as to use and corridor location and size and both use and corridor location and size shall be reasonably related to an anticipated public use or a planned or existing governmental function.

(2) No public easement shall be reserved in such manner as to:

(i) Deprive the grantee or its successor in interest of reasonable access to bodies of water or highways in or bordering upon the land embraced in the conveyance without his consent.

(ii) Constitute a so-called scenic easement.

(c) A reserved public easement shall be subject to the following conditions:

(1) The Secretary shall terminate a public easement if it is not used for its purpose by the date specified in the conveyance, but in any event not later than December 18, 2001, or if he finds that conditions are such that its retention is no longer needed for public use or governmental function. However, the Secretary shall not terminate a public easement reserved along the marine coastline solely because of the absence of proof of public use.

(2) The grantee or its successor in interest shall be entitled to just compensation for the loss of value of any improvements existing on the date of the reservation of the easement which are impaired or required to be removed by the exercise of the easement.

(3) The easement shall be no more extensive in size than is reasonably required for the purpose for which reserved. Upon the definite location of an easement or easements for which a corridor was reserved, the reservation to the extent not used for the easement or easements shall be of no further force or effect.

(4) A corridor location shall be no more extensive in width or length than is reasonably necessary to locate any easement to be reserved, taking into consideration climate, topography, terrain, and available data.

(d) The State and the Federal-State Land Use Planning Commission shall be afforded 90 days after notice by the Secretary to make recommendations with respect to the inclusion of public easements in any conveyance.

§ 2650.5 Survey requirements.

§ 2650.5–1 General.

(a) Selected areas are to be surveyed as provided in section 13 of the act. Any survey or description used as a basis for conveyance must be adequate to identify the lands to be conveyed.

(b) Surveys shall take into account the navigability or nonnavigability of bodies of water. The beds of all bodies of water determined by the Secretary to be navigable shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlements under the act. Prior to making his determination as to the navigability of a body of water, the Secretary shall afford the affected regional corporation the opportunity to review the data submitted by the State of Alaska on the question of navigability and to submit its views on the question of navigability. Upon request of a regional corporation or the State of Alaska, the Secretary shall provide in writing the basis upon which his final determination of navigability is made. The beds of all bodies of water not determined to be navigable shall be included in the surveys as public lands, shall be included in the gross area of the surveys, and shall be charged to total acreage entitlements under the act. The beds of all nonnavigable bodies of water comprising one half or more of a section shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlement under the act, unless the section containing the body of water is expressly selected or unless all the riparian land surrounding the body of water is selected. No ground survey or monumentation will be required to be done by the Bureau of Land Management of bodies of water.

§ 2650.5–2 Rule of approximation.

To assure full entitlement, the rule of approximation may be applied with respect to the acreage limitations applicable to conveyances and surveys under this authority, i.e., any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated (see 62 I.D. 417, 421).

§ 2650.5–3 Regional surveys.

Lands to be conveyed to a regional corporation, when selected in contiguous units, shall be together for the purpose of survey and surveyed as one tract, with monuments being established on the exterior boundary at angle points and at intervals of approximately 2 miles on straight lines. If requested by the grantee, the Secretary may survey, insofar as practicable, the individual selections that comprise the total tract.

§ 2650.5–4 Village surveys.

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the act.

(c) (1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation

or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

§ 2650.5–5 Cemetery sites and historical places.

Only those cemetery sites and historical places to be conveyed under section 14(h)(1) of the act shall be surveyed.

§ 2650.5–6 Adjustment to plat of survey.

All conveyances issued for lands not covered by officially approved surveys of the Bureau of Land Management shall note that upon the filing of an official plat of survey, the boundary of the selected area, described in terms of protraction diagrams or by metes and bounds, shall be redescribed in accordance with the plats of survey. However, no change will be made in the land selected.

§ 2650.6 Selection limitations.

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first-class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan.

(b) Determination as to which cities were classified as home rule or first class as of December 18, 1971, and their boundaries as of that date will be made in accordance with the laws of the State of Alaska.

(c) If any village corporation whose land withdrawals encompass Dutch Harbor is found eligible under this act, it may select lands pursuant to subpart 2651 of this chapter and receive a conveyance under the terms of section 14(a) of the act.

§ 2650.7 Publication.

In order to determine whether there are any adverse claimants to the land, the applicant should publish notice of his application. If the applicant decides to avail himself of the privilege of publishing a notice to all adverse claimants and requests it, the authorized officer will prepare a notice for publication. The publication will be in accordance with the following procedure:

(a) The applicant will have the notice published allowing all persons claiming the land adversely to file in the appropriate land office their objections to the issuance of any conveyance. The notice shall be published once a week for 4 consecutive weeks in a newspaper of general circulation.

(b) The applicant shall file a statement of the publisher, accompanied by a copy of the published notice, showing that publication has been had for 4 consecutive weeks. The applicant must pay the cost of publication.

(c) Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

(d) For all land selections made under the act, in order to give actual notice of the decision of the Bureau of Land Management proposing to convey lands, the decision shall be served on all known parties of record who claim to have a property interest or other valid existing right in land affected by such decision, the appropriate regional corporation, and any Federal agency of record. In order to give constructive notice of the decision to any unknown parties, or to known parties who cannot be located after reasonable efforts have been expended to locate, who claim a property interest or other valid existing right in land affected by the decision, notice of the decision shall be published once in the FEDERAL REGISTER and, once a week, for four (4) consecutive weeks, in one or more newspapers of general circulation in the State of Alaska nearest the locality where the land affected by the decision is situated, if possible. Any decision or notice actually served on parties or constructively served on parties in accord with this subsection shall state that any party claiming a property interest in land affected by the decision may appeal the decision to the Alaska Native Claims Appeals Board. The decision or notice of decision shall also state that: (i) any party receiving actual notice of the decision shall have 30 days from the receipt of actual notice to file an appeal; and, (ii) that any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign a receipt for actual notice, shall have 30 days from the date of publication in the FEDERAL REGISTER to file an appeal. Furthermore, the decision or notice of decision shall inform readers where further information on the manner of, and requirements for, filing appeal may be obtained, and shall also state that any party known or unknown who may claim a property interest which is adversely affected by the decision shall be deemed to have waived their rights which were adversely affected unless an appeal is filed with the Alaska Native Claims Appeal Board in accordance with the requirements stated in the decisions or notices provided for in this subsection and the regulations governing such appeals set out in 43 CFR Part 4, Subpart J.

§ 2650.8 Appeals.

Any decision relating to a land selection shall become final unless appealed to the Alaska Native Claims Appeal Board by a person entitled to appeal, under, and in accordance with, Subpart J of Part 4, 43 CFR.

Subpart 2651—Village Selections

Sec.	
2651.0–3	Authority.
2651.1	Entitlement.
2651.2	Eligibility requirements.
2651.3	Selection period.
2651.4	Selection limitations.
2651.5	Conveyance reservations.
2651.6	Airport and air navigation facilities.

Subpart 2651—Village Selections

§ 2651.0–3 Authority.

Sections 12 and 16(b) of the act provide for the selection of lands by eligible village corporations.

§ 2651.1 Entitlement.

(a) Village corporations eligible for land benefits under the act shall be entitled to a conveyance to the surface estate in accordance with sections 14(a) and 16(b) of the act.

(b) In addition to the land benefits in paragraph (a) of this section, each eligible village corporation shall be entitled to select and receive a conveyance to the surface estate for such acreage as is reallocated to the village corporation in accordance with section 12(b) of the act.

§ 2651.2 Eligibility requirements.

(a) Pursuant to sections 11(b) and 16(a) of the act, the Director, Juneau Area Office, Bureau of Indian Affairs, shall review and make a determination, not later than December 19, 1973, as to which villages are eligible for benefits under the act.

(1) *Review of listed native villages.* The Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination of the eligibility of villages listed in section 11(b)(1) and 16(a) of the act. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to paragraph (b) of this section.

(2) *Findings of fact and notice of proposed decision.*—After completion of the investigation and examination of records and evidence with respect to the eligibility of a village listed in sections 11(b)(1) and 16(a) of the act for land benefits, the Director, Juneau Area Office, Bureau of Indian Affairs, shall publish in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska his proposed decision with respect to such eligibility and shall mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska and the State of Alaska. His proposed decision is subject to protest by any interested party within 30 days of the publication of the proposed decision in the FEDERAL REGISTER. If no valid protest is received within the 30-day period, such proposed decision shall become final and shall be published in the FEDERAL REGISTER. If the final decision is in favor of a listed village, the Director, Juneau Area Office, Bureau of Indian Affairs, shall issue a certificate as to the eligibility

of the village in question for land benefits under the act, and certify the record and the decision to the Secretary. Copies of the final decisions and certificates of village eligibility shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, and the state of Alaska.

(3) *Protest.*—Within 30 days from the date of publication of the proposed decision in the FEDERAL REGISTER, any interested party may protest a proposed decision as to the eligibility of a village. No protest shall be considered which is not accompanied by supporting evidence. The protest shall be mailed to the Director, Juneau Area Office, Bureau of Indian Affairs.

(4) *Action on protest.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall examine and evaluate the protest and supporting evidence required herein, together with his record of findings of fact and proposed decision, and shall render a decision on the eligibility of the Native village that is the subject of the protest. Such decision shall be rendered within 30 days from the receipt of the protest and supporting evidence by the Director, Juneau Area Office, Bureau of Indian Affairs. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeal Board within 30 days of its publication in the Federal Register.

(5) *Action on appeals.* Appeals shall be made to the Alaska Native Claims Appeal Board in accordance with Subpart J of Part 4 of this title. Decisions of the Board on village eligibility appeals are not final until personally approved by the Secretary.

(6) *Applications by unlisted villages for determination of eligibility.*—The head or any authorized subordinate officer of a Native village not listed in section 11(b) of the act may file on behalf of the unlisted village an application for a determination of its eligibility for land benefits under the act. Such application shall be filed in duplicate with the Director, Juneau Area Office, Bureau of Indian Affairs, prior to September 1, 1973. If the application does not constitute prima facie evidence of compliance with the requirements of paragraph (b) of this section, he shall return the application to the party filing the same with a statement of reasons for return of the application, but such filing, even if returned, shall constitute timely filing of the application. The Director, Juneau Area Office, Bureau of Indian Affairs, shall immediately forward an application which appears to meet the criteria for eligibility to the appropriate office of the Bureau of Land Management for filing. Each application must identify the township or townships in which the Native village is located.

(7) *Segregation of land.*—The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a) (1) and (2) of the act.

(8) *Action on application for eligibility.*—Upon receipt of an application which appears to meet the criteria for eligibility, the Director, Juneau Area Office, Bureau of Indian Affairs, shall have a notice of the filing of the application published in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall promptly review the statements contained in the application. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to this subpart 2651, and thereafter make findings of fact as to the character of the village. No later than December 19, 1973, the Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination as to the eligibility of the village as a Native village for land benefits under the act and shall issue a decision. He shall publish his decision in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall mail a copy of the decision to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations, and the State of Alaska.

(9) *Protest to eligibility determination.*—Any interested party may protest a decision of the Director, Juneau Area Office, Bureau of Indian Affairs, regarding the eligibility of a Native village for land benefits under the provisions of sections 11(b)(3) (A) and (B) of the act by filing a notice of protest with the Director, Juneau Area Office, Bureau of Indian Affairs, within 30 days from the date of publication of the decision in the FEDERAL REGISTER. A copy of the protest must be mailed to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations within Alaska, the State of Alaska, and any other parties of record. If no protest is received within the 30-day period, the decision shall become final and the Director, Juneau Area Office, Bureau of Indian Affairs, shall certify the record and the decision to the Secretary. No protest shall be considered which is not accompanied by supporting evidence. Anyone protesting a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect. Anyone appealing a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect.

(10) *Action on protest, appeal.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall follow the procedure outlined in paragraph (a)(4) of this section. If an appeal is taken from a decision on eligibility, the provisions of paragraph (a)(5) of this section shall apply.

(b) Except as provided in subparagraph (4) of this paragraph, villages must meet each of the following criteria to be eligible for benefits under sections 14 (a) and (b) of the act:

(1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.

(2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: *Provided,* That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.

(3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:

(i) Population over 600.

(ii) A centralized water system and sewage system that serves a majority of the residents.

(iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.

(iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in sections 11 and 16 of the act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to subparagraph (3) of this paragraph.

§ 2651.3 Selection period.

Each eligible village corporation must file its selection application(s) not later than December 18, 1974, under sections 12(a) or 16(b) of the act; and not later than December 18, 1975, under section 12(b) of the act.

§ 2651.4 Selection limitations.

(a) Each eligible village corporation may select the maximum surface acreage entitlement under sections 12 (a) and (b) and section 16(b) of the act. Village corporations selecting lands under sections 12 (a) and (b) may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; and

(2) 69,120 acres of land from the National Wildlife Refuge System; and

(3) 69,120 acres of land from the National Forest System.

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection or a section in which a body of water comprises more than one-half of the total acreage of a section. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12 (a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

(d) Village corporation selections within sections 11 (a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(e) Village or regional corporations are not required to select lands within an unpatented mining claim or millsite. Unpatented mining claims and millsites shall be deemed to be selected, unless they are excluded from the selection by metes and bounds or other suitable description and there is attached to the selection application a copy of the notice of location and any amendments thereto. If the village or regional corporation selection omits lands within an unpatented mining claim or millsite, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the excepted mining claims or millsites are declared invalid, or under the State of Alaska mining laws are determined to be abandoned, the selection will no longer be considered as compact and contiguous. The corporation shall be required to amend its selection, upon notice from the authorized officer of the Bureau of Land Management, to include the lands formerly included in the mining claim or millsite. If the corporation fails to amend its selection to include such lands, the selection may be rejected.

(f) Eligible village corporations may file applications in excess of their total entitlement. To insure that a village acquires its selection in the order of its priorities, it should identify its choices numerically in the order it wishes them granted. Such selections must be filed not later than December 18, 1974, as to sections 12(a) or 16(b) selections and December 18, 1975, as to section 12(b) selections.

(g) Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with section 12(e) of the act.

§ 2651.5 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to village corporations shall provide for the transfer of the surface estates specified in section 14(c) of the act, and shall be subject to valid existing rights under section 14(g) of the act.

§ 2651.6 Airport and air navigation facilities.

(a) Every airport and air navigation facility owned and operated by the United States which the Secretary determines is actually used in connection with the administration of a Federal program will be deemed a "Federal installation" under the provisions of section 3(e) of the act, and the Secretary will determine the smallest practicable tract which shall enclose such Federal installations. Such Federal installations are not public lands as defined in the act and are therefore not "lands available for selection" under the provisions of these regulations.

(b) The surface of all other lands of existing airport sites, airway beacons, or other navigation aids, together with such additional acreage or easements as are necessary to provide related services and to insure safe approaches to airport runways, shall be conveyed by the village corporation to the State of Alaska, and the Secretary will include in the conveyance to any village corporation any and all covenants which he deems necessary to insure the fulfillment of this obligation.

Subpart 2652—Regional Selections

Sec.	
2652.0–3	Authority.
2652.1	Entitlement.
2652.2	Selection period.
2652.3	Selection limitations.
2652.4	Conveyance reservations.

Subpart 2652—Regional Selections

§ 2652.0–3 Authority.

Sections 12 (a)(1) and (c)(3) provide for selections by regional corporations; and sections 14 (e), (f), (h) (1), (2), (3), (5), and (8), provide for the conveyance to regional corporations of the selected surface and subsurface estates, as appropriate.

§ 2652.1 Entitlement.

(a) Eligible regional corporations may select the maximum acreage granted pursuant to section 12(c) of the act. They will be notified by the Secretary of their entitlement as expeditiously as possible.

(b) Where subsurface rights are not available to the eligible regional corporations in lands whose surface has been conveyed under section 14 of the act, the regional corporations may select an equal subsurface acreage from lands withdrawn under sections 11(a) (1) and (3) of the act, within the region, if possible.

(c) As appropriate, the regional corporations will receive title to the subsurface estate of lands, the surface estate of which is conveyed pursuant to section 14 of the act.

(d) If a 13th regional corporation is organized under section 7(c) of the act, it will not be entitled to any grant of lands.

§ 2652.2 Selection period.

All regional corporations must file their selection applications not later than December 18, 1975, for lands other than those allocated under section 14(h)(8) of the act.

§ 2652.3 Selection limitations.

(a) To the extent necessary to obtain its entitlement, each regional corporation must select all available lands withdrawn pursuant to sections 11(a)(1) (B) and (C) of the act, before selecting lands withdrawn pursuant to section 11(a)(3) of the act, except that regional corporations selecting lands withdrawn pursuant to sections 11(a)(1) (B) and (C) may select only even-numbered townships in even-numbered ranges and only odd-numbered townships in odd-numbered ranges.

(b) Village corporation selections within section 11(a)(1) and section 11 (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(c) Whenever a regional selection is made in any township, the regional corporation shall select all available lands in that township: *Provided,* That such selection would not exceed the entitlement of that regional corporation.

(d) Subsurface selections made by a regional corporation pursuant to section 12(a) of the act shall be contiguous and the total area selected shall be reasonably compact, except as separated by subsurface interests that are not the property of the United States including subsurface interests under bodies of water, and the selection shall be in whole sections where they are available, or shall include all available subsurface interests in less than whole sections and, wherever feasible, shall be in units of not less than 1,280 acres. The total area selected shall not be considered to be reasonably compact if (1) it excludes other subsurface interests available for selection within its exterior boundaries; or (2) an isolated tract of subsurface interests owned by the United States of less than 1,280 acres remains after selection.

(e) Regional corporations are not required to select lands within unpatented mining claims or millsites, as provided in § 2651.4(e) of this chapter.

(f) Regional corporations may file applications in excess of their total entitlement. To insure that a regional corpora-

tion acquires its selections in the order of its priorities, it should identify its choices numerically in the order it wishes them granted.

§ 2652.4 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to regional corporations for the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

Subpart 2653—Miscellaneous Selections

Sec.	
2653.0–3	Authority.
2653.0–5	Definitions.
2653.1	Conveyance limitations.
2653.2	Application procedures.
2653.3	Lands available for selection.
2653.4	Termination of selection period.
2653.5	Cemetery sites and historical places.
2653.6	Native group selections.
2653.7	Sitka-Kenai-Juneau-Kodiak selections.
2653.8	Primary place of residence.
2653.8–1	Acreage to be conveyed.
2653.8–2	Primary place of residence criteria.
2653.9	Regional selections.
2653.10	Excess selections.
2653.11	Conveyance reservations.

Subpart 2653—Miscellaneous Selections

§ 2653.0–3 Authority.

Section 14(h) of the act requires the Secretary to withdraw and to convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 of the act. The Secretary will convey the land in part as follows:

(a) Title to existing cemetery sites and historical places to the regional corporations for the regions in which the lands are located;

(b) Title to the surface estate to any Native group that qualifies pursuant to this subpart 2653;

(c) Title to the surface estate of lands to the Natives residing in each of the cities of Sitka, Kenai, Juneau, and Kodiak, who have incorporated;

(d) Title to the surface estate of land to a Native as a primary place of residence.

(e) Title to the regional corporations for lands selected, if any remain, pursuant to section 14(h)(8) of the Act; and

(f) Title to the subsurface estate to the regional corporations of lands conveyed under paragraphs (b) and (d) of this section and title to the regional corporations to the subsurface estate to those lands not located in a National Wildlife Refuge under paragraph (c) of this section.

§ 2653.0–5 Definitions.

(a) "Cemetery site" means a burial ground consisting of the gravesites of one or more Natives.

(b) "Historical place" means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

(c) "Native group" means any tribe, band, clan, village, community or village association of Natives composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska.

(d) "Primary place of residence" means a place comprising a primary place of residence of an applicant on August 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

§ 2653.1 Conveyance limitations.

(a) Under section 14(h) of the act, a total of 2 million acres may be selected for cemetery sites and historical places, Native groups, corporations formed by the Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for Native allotments approved as provided in section 18 of the act. Selections must be made before July 1, 1976. Of this total amount: (1) 500,000 acres will be set aside to be used by the Secretary to satisfy applications filed pursuant to section 14(h) (1), (2), and (5) of the act. The 500,000 acres will be allocated by: (i) Dividing 200,000 acres among the regions based on the number of Natives enrolled in each region; and, (ii) dividing 300,000 acres equally among the regions; (2) 92,160 acres will be set aside for possible allocation by the Secretary to corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak; (3) 400,000 acres will be set aside to be used by the Secretary to satisfy Native allotment applications approved prior to December 18, 1975, under the act of May 17, 1906 (34 Stat. 197), the act of February 8, 1887 (24 Stat. 389), as amended and supplemented, and the act of June 25, 1910 (36 Stat. 863). Any Native allotment applications pending before the Bureau of Indian Affairs or the Bureau of Land Management on December 18, 1971, will be considered as "pending before the Department." Those allotment applications which have been determined to meet the requirements of the acts cited herein and for which survey has been requested before December 18, 1975, shall be considered "approved" under section 14(h)(6) of the act and shall be charged against the acreage.

(b) After subtracting the number of acres used in accordance with paragraph (a) of this section from 2 million acres, the remainder will, after July 1, 1976, be reallocated by the Secretary among the regional corporations in accordance with the number of Natives enrolled in each region.

§ 2653.2 Application procedures.

(a) All applications must be filed in accordance with the procedures in § 2650.2(a) of this chapter.

(b) Applications by corporations of Native groups under section 14(h)(2) and by a Native for a primary place of residence under section 14(h)(5) of the act must be accompanied by written concurrence of the affected regional corporation. In the case of Native groups, such concurrence must also indicate how much land per member of the Native group, not to exceed 320 acres per member, the regional corporation recommends that the Secretary convey. Any application not accompanied by the necessary concurrence and recommendation of the affected region will be rejected.

(c) Native groups, and Natives residing in Sitka, Kenai, Juneau, and Kodiak, as provided in sections 14(h) (2) and (3), respectively, must comply with the applicable terms of §§ 2650.2(a), (c), (d), (e), and (f) of this chapter.

(d) The filing of an application under the regulations of this section will constitute a request for withdrawal of the lands, and will segregate the lands from all other forms of appropriation under the public land law, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended, subject to valid existing rights, but will not segregate the lands from selections under section 12 or 16 of the act. The segregative effect of such an application will terminate if the application is rejected.

§ 2653.3 Lands available for selection.

(a) Selection may be made for existing cemetery sites or historical places, Native groups, corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak, and for primary places of residence, from any unappropriated and unreserved lands which the Secretary may withdraw for these purposes: *Provided,* That National Wildlife Refuge System lands and National Forest lands may be made available as provided by section 14(h)(7) of the Act and the regulations in this subpart. Selections for these purposes may also be made from any unappropriated and unreserved lands which the Secretary may withdraw from lands formerly withdrawn and not selected under section 16 of the Act and after December 18, 1975, from lands formerly withdrawn under section 11(a)(1) or 11(a)(3) and not selected under sections 12 or 19 of the Act.

(b) After December 18, 1975, selection of the lands allocated pursuant to § 2653.1(b), shall be made from any lands previously withdrawn under sections 11 or 16 of the act which are not otherwise appropriated.

(c) A withdrawal made pursuant to section 17(d)(1) of the Act which is not part of the Secretary's recommendation to Congress of December 18, 1973, on the four national systems shall not preclude a withdrawal pursuant to section 14(h) of the Act.

§ 2653.4 Termination of selection period.

Except as provided in § 2653.10, applications for selections under this subpart will be rejected after all allocated lands, as provided in § 2653.1, have been exhausted, or if the application is received after the following dates, whichever occurs first:

(a) As to primary place of residence—December 18, 1973.

(b) As to all recipients described in sections 14(h) (1), (2), and (3) of the act—July 1, 1976.

(c) As to all recipients under section 14(h)(8) of the act and § 2653.1(b)—December 18, 1977.

§ 2653.5 Cemetery sites and historical places.

(a) The appropriate regional corporation may apply to the Secretary for the conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the act. The Secretary may give favorable consideration to these applications: *Provided,* That the Secretary determines that the criteria in these regulations are met: *And provided further,* That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in § 2653.11.

(b) A historical place may be granted in a National Wildlife Refuge or National Forest unless, in the judgment of the Secretary, the events or the qualities of the site from which it derives its particular value and significance as a historical place can be commemorated or found in an alternative site outside the refuge or forest, or if the Secretary determines that the conveyance could have a substantial detrimental effect on (1) a fish or wildlife population, (2) its habitat, (3) the management of such population or habitat, or (4) access by a fish or wildlife population to a critical part of its habitat.

(c) Although the existence of a cemetery site or historical place and a proper application for its conveyance create no valid existing right, they operate to segregate the land from all other forms of appropriation under the public land laws. Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this subpart are subject to the provisions of section 22(g) of the Act and section 2650.4–6 as though they were conveyances to a village corporation.

(d) For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or

(2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or

(3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or

(4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

(e) Criteria considerations for historic places: Ordinarily, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible as a historical place unless they fall within one of the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(2) A building or structure removed from its original location but which is the surviving structure most importantly associated with a historic person or event;

(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(5) A reconstructed building when accurately executed in a suitable environment and preserved in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived;

(6) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

(f) Applications by a regional corporation under section 14(h)(1) of the Act for conveyance of existing cemetery sites or historical places within its boundaries shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a) of this chapter. The regional corporation shall include as an attachment to its application for a historical place a statement describing the events that took place and the qualities of the site from which it derives its particular value and significance as a historical place. In making the application, the regional corporation should identify accurately and with sufficient specificity the size and location of the site for which the application is made as an existing cemetery site or historical place to enable the Bureau of Land Management to segregate the proper lands. The land shall be described in accordance with § 2650.2(e) of this chapter, except that if the site under application is less than 2.50 acres or if it cannot be described by a protracted survey description, it shall be described by a metes and bounds description.

(g) Upon receipt of an application for an existing cemetery site or historical place, the Bureau of Land Management shall segregate from all other appropriation under the public land laws the land which it determines, adequately encompasses the site described in the application.

(h) Notice of filing of such application specifying the regional corporation, the size and location of the segregated lands encompassing the site for which application has been made, the date of filing, and the date by which any protest of the application must be filed shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Department. The Bureau of Land Management shall then forward the application to the Director, Juneau Area Office, Bureau of Indian Affairs, for investigation, report, and certification and supply a copy to the National Park Service. When an application pertains to lands within a National Wildlife Refuge or National Forest, the Bureau of Land Management shall also forward informational copies of the application and the size and location of segregated lands to the agency or agencies involved.

(i) If, during its investigation, the Bureau of Indian Affairs finds that the location of the site as described in the application is in error, it shall notify the applicant, the Bureau of Land Management, and other affected Federal agencies, of such error. The applicant shall have 60 days from receipt of such notice to file with the Bureau of Land Management an amendment to its application with respect to the location of the site. Upon acceptance of such amendment the Bureau of Land Management shall reprocess the application, including segregation of lands and publication of notice.

(j) The Bureau of Indian Affairs shall identify on a map and mark on the ground, including gravesites or other important items, the location and size of the site or place with sufficient clarity to enable the Bureau of Land Management to locate on the ground said site or place. The Bureau of Indian Affairs, after consultation with the National Park Service and, in the case of refuges and forests, the agency or agencies involved, shall certify as to the existence of the site or place and that it meets the criteria in this subpart.

(1) *Cemetery Sites.* The Bureau of Indian Affairs shall certify specifically that the site is the burial place of one or more Natives. The Bureau of Indian Affairs shall determine whether the cemetery site is in active or inactive use, and if active, it shall estimate the degree of use by Native groups and villages in the area which it shall identify.

(2) *Historical Places.* The Bureau of Indian Affairs shall describe the events that took place and qualities of the site which give it particular value and significance as a historical place.

(k) The Bureau of Indian Affairs shall submit its report and certification along with the written comments and recommendations of the National Park Service and any other Federal agency, to the Bureau of Land Management. If the land is available, the Bureau of Land Management shall issue a decision to convey. However, where the issues in § 2653.5(b) are raised by the reports of the Fish and Wildlife Service or the Forest Service, the State Director, Bureau

of Land Management shall submit the record including a land status report, to the Secretary for resolution of any conflicts. If the land is available for that purpose, the Secretary shall make his determination to convey or not to convey the site to the applicant.

(l) The decision of the Bureau of Land Management or the Secretary shall be served on the applicant and all parties of record in accordance with the provisions of 43 CFR Part 4, Subpart J and shall be published in accordance with § 2650.7 of this part. The decision of the Bureau of Land Management shall become final unless appealed to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J. Any agency adversely affected by the certification of BIA or the decision of the Bureau of Land Management may also appeal the matter to the Alaska Native Claims Appeals Board. After a decision to convey an existing cemetery site or historical place has become final, the Bureau of Land Management shall adjust the segregation of the lands to conform with said conveyance.

(m) For inactive cemeteries, the boundaries of such cemetery sites shall include an area encompassing all actual gravesites including a reasonable buffer zone of not more than 66 feet. For active cemeteries, the boundaries of such sites shall include an area of actual use and reasonable future expansion of not more than 10 acres, but the BLM in consultation with any affected Federal agency may include more than 10 acres upon a determination that special circumstances warrant it. For historical places, the boundaries shall include an area encompassing the actual site with a reasonable buffer zone of not more than 330 feet.

§ 2653.6 Native groups.

(a) *Eligibility.* (1) The head or any authorized representative of a Native group incorporated pursuant to section 14(h)(2) of the Act may file on behalf of the group an application for a determination of its eligibility under said section of the Act. Such application shall be filed in duplicate with the appropriate officer, Bureau of Land Management, prior to April 16, 1976, in accordance with § 2650.2(a) of this chapter. Upon serialization of the application, the Bureau of Land Management office will forward a copy of such application to the Director, Juneau Area Office, Bureau of Indian Affairs, who shall investigate and report the findings of fact required to be made herein to the Bureau of Land Management with a certification thereof. A copy of an application by a group located within a National Wildlife Refuge or a National Forest will be furnished to the appropriate agency administering the area.

(2) Each application must identify the section, township, and range in which the Native group is located, and must be accompanied by a list of the names of the Native members of the group, a listing of permanent improvements and periods of use of the locality by members, a conformed copy of the group's article of incorporation, and the regional corporation's concurrence and recommendation under § 2653.2(b).

(3) Notice of the filing of such application specifying the date of such filing, the identity and location of the Native group, and the date by which any protest of the application must be filed shall be prepared by the Bureau of Indian Affairs and shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Department. Any protest to the application shall be filed with the Bureau of Indian Affairs within the time specified in the notice.

(4) The Bureau of Indian Affairs shall investigate and determine whether each member of a Native group formed pursuant to section 14(h)(2) of the Act is enrolled pursuant to section 5 of the Act. The Bureau of Indian Affairs shall determine whether the members of the Native group actually reside in and are enrolled to the locality specified in its application. The Bureau of Indian Affairs shall specify the number and names of Natives who actually reside in and are enrolled to the locality, including children who are members of the group and who are temporarily elsewhere for purposes of education, and it shall further determine whether the members of the Native group constitute the majority of the residents of the locality where the group resides. The Bureau of Indian Affairs shall determine and identify the exterior boundaries of the Native group's locality and the location of all those permanent structures of the Native group used as dwelling houses.

(5) The Native group must have an identifiable physical location. The members of the group must use the group locality as a place where they actually live in permanent structures used as dwelling houses. The group must have the character of a separate community, distinguishable from nearby communities, and must be composed of more than a single family or household. Members of a group must have enrolled to the group's locality pursuant to section 5 of the Act, must actually have resided there as of the 1970 census enumeration date, and must have lived there as their principal place of residence since that date.

(6) The Bureau of Indian Affairs shall issue its certification, containing its findings of fact required to be made herein and its determination of the eligibility of the Native group, except it shall issue a certification of ineligibility when it is notified by the Bureau of Land Management that the land is unavailable for selection by such Native group. It shall send a copy thereof by certified mail to the Bureau of Land Management, the Native group, its regional corporation and any party of record.

(7) Appeals concerning the eligibility of a Native group may be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

(b) *Selections.* (1) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less. Any acreage selected in excess of that number shall be identified as alternate selections and shall be numerically ordered to indicate selection preference. Native groups will not receive land benefits unless the land which is occupied by their permanent structures used as dwelling houses is available, or in the case where such land is not State or Federally owned, the land which is contiguous to and immediately surrounds the land occupied by their permanent structures used as dwelling houses is available, and is not within a wildlife refuge or forest, pursuant to section 14(h) of the Act. Public lands which may be available for this purpose are set forth in § 2653.3 (a) and (c). Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this part are subject to the provisions of section 22(g) of the Act and § 2650.4–6 of this chapter as though they were conveyances to a village corporation.

(2) Upon receipt of the applications of a Native group for a determination of its eligibility under section 14(h)(2) of the Act, the Bureau of Land Management shall segregate the land encompassed within the group locality from land available for that purpose pursuant to § 2653.6(b)(1). However, segregation of land for Native groups whose dwelling structures are located outside but adjacent to a National Wildlife Refuge or National Forest shall not include such reserved land, unless the Native group's dwelling structures are located on land excepted from the Kodiak National Wildlife Refuge pursuant to Public Land Order No. 1634 (F.R. Doc. 58–3696, filed May 16, 1958).

(3) The Bureau of Indian Affairs shall visit the locality of the group and shall recommend to the Bureau of Land Management the manner in which the segregation should be modified to encompass the residences of as many members as possible while allowing for the inclusion of the land most intensively used by members of the Native group. The recommended segregation must be contiguous and as compact as possible. The Bureau of Land Management may segregate the land accordingly provided such lands are otherwise available in accordance with §§ 2653.6(b)(1) and 2653.6 (b)(2). If the Bureau of Land Management finds the lands are unavailable for selection by a Native group, it shall notify the Bureau of Indian Affairs.

(4) Selections shall be made from lands segregated for that purpose and shall be filed prior to July 1, 1976. Selections shall be contiguous and taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact except where separated by lands which are unavailable for selection. The total area selected will not be considered to be reasonably compact if (i) it excludes other lands available for selection within its exterior boundaries; or (ii) an isolated tract of public land of less than 640 acres remains after selection. The lands selected shall be in quarter sections where they are available unless the exhaustion of the acreage which the group may be entitled to select does not permit the selection of a quarter section and shall include all available lands in less than quarter sections. Lands selected shall

conform as nearly as practicable to the United States land survey system.

(5) A Native group whose eligibility has not been finally determined may file its land selections as if it were determined to be eligible. The Bureau of Land Management shall release from segregation the lands not selected and shall continue segregation of the selected land until the lands are conveyed or the group is finally determined to be ineligible. However, in the case of a group determined to be ineligible by the Alaska Native Claims Appeals Board, the segregation shall be continued for a period of 60 days from the date of such decision.

(6) Where any conflict in land selection occurs between any eligible Native groups, the Bureau of Land Management shall request the appropriate regional corporation to recommend the manner in which such conflict should be resolved.

(7) The Bureau of Land Management shall issue a decision on the selection of a Native group determined to be eligible and shall serve a copy of such decision by certified mail on the Native group, its regional corporation and any party of record and the decision shall be published in accordance with § 2650.7 of this part.

(8) Appeals from the Bureau of Land Management decision on the selection by a Native group under this section shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

§ 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located, After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

§ 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

§ 2653.8–1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land pursuant to sections 14 (c) (2), (h) (2), or 18 of the act.

§ 2653.8–2 Primary place of residence criteria.

(a) *Periods of occupancy.*—Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.*—(1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches, etc.

(c) *Evidence of occupancy.*—Must have evidence of permanent or seasonal occupancy for substantial periods of time.

§ 2653.8–3 Appeals.

Appeals from decisions made by the Bureau of Land Management on applications filed pursuant to section 14(h) (5) of the Act shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

§ 2653.9 Regional selections.

(a) Applications by a regional corporation for selection of land within its boundaries under section 14(h) (8) of the Act shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a). Selections made under section 14(h) (1), (2), (3), and (5) of the Act will take priority over selections made pursuant to section 14(h) (8). Lands available for section 14 (h) (8) selections are those lands originally withdrawn under section 11(a) (1), (3), or 16(a) of the Act and not conveyed pursuant to selections made under sections 12(a), (b), or (c), 16(b) or 19 of the Act.

(b) A regional corporation may select a total area in excess of its entitlement to ensure that it will obtain its entitlement in the event of any conflicts. Any acreage in excess of its entitlement shall be identified as alternate selections and shall be numerically ordered on a section by section basis to indicate selection preference.

(c) Selections need not be contiguous but must be made along section lines in reasonably compact tracts of at least 5,760 acres, not including any unavailable land contained therein. The exterior boundaries of such tracts shall be in linear segments of not less than two miles in length, except where adjoining unavailable lands or where shorter segments are necessary to follow section lines where township lines are offset along standard parallels caused by the convergence of the meridians. However, selected tracts may contain less than 5,760 acres where there is good cause shown for such selection, taking into consideration good land management planning and principles for the potentially remaining public lands, and which would not leave unduly fragmented tracts of such public lands. Each tract selected shall not be considered to be reasonably compact if (1) it excludes other lands for selection within its exterior boundaries, or (2) an isolated tract of public land of less than 1,280 acres remains after selection of the total entitlement. Regional corporations shall not be precluded from selecting less than 5,760 acres where the entire tract available for selection constitutes less than 5,760 acres. Selection shall conform as nearly as practicable to the United States land survey system.

(d) Notice of the filing of such selections, including the date by which any protest of the selection should be filed, shall be published once in the FEDERAL REGISTER and one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Department. Any protest to the application should be filed in the Bureau of Land Management office in which such selections were filed within the time specified in the notice.

(e) Appeals from decisions made by the Bureau of Land Management with respect to such selections shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

§ 2653.10 Excess selections.

Where land selections by a regional corporation, Native group, any of the four named cities, or a Native pursuant to section 14(h) (1), (2), (3), or (5) exceed the land entitlement, the Bureau of Land Management may request such corporation to indicate its preference among lands selected.

§ 2653.11 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyance for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation shall not authorize mining or mineral activity of any type; nor shall it authorize any use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place (standards for determining uses which are incompatible with or in derogation of the values of the area are found in relevant portions of 36 CFR 800.9 (1974)); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in this subsection may be released by the Secretary, in his discretion, upon application of the regional corporation grantee showing that extraordinary circumstances of a nature to warrant the release have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4–6 of this chapter.

Subpart 2654—Native Reserves

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Subpart 2654—Native Reserves

§ 2654.0–3 Authority.

Section 19(b) of the act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the act.

§ 2654.0–5 Definitions.

"Reserve lands" means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the act.

§ 2654.1 Exercise of option.

(a) Any village corporation which has not, by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR 43h.7. The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and bylaws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the act.

This Circular replaces Circulars 2343 and 2373.

It also includes the amended regulations published April 7, 1976 (41 FR 14734) and Secretary's Orders 2982 and 2987 concerning Reservations of Easements.

Office of the Secretary

[Order No. 2982]

ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

Reservation of Local Easements

SECTION 1. *Purpose.* The purpose of this order is (a) to establish policy, guidelines, and procedures for reserving local public easements in the State of Alaska pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708), and (b) to delegate to the State Director, Bureau of Land Management, Alaska, the authority of the Secretary of the Interior to determine which local public easements are necessary and to reserve such easements for public use.

SEC. 2. *Delegation of Authority.* The State Director, Bureau of Land Management, Alaska, is hereby delegated authority to determine which local public easements are necessary and to reserve such easements for public use, pursuant to the policy, guidelines, procedures and limitations within this order.

SEC. 3. *Scope.* This order deals with local public easements. Local public easements include all public easements other than easements to be used in interregional or interstate commerce for the transportation of energy, fuels, or natural resources, or for interregional or interstate communications systems.

Instructions for the reservation of easements for interregional or interstate transportation of energy, fuels, or natural resources, and for interregional or interstate communication systems shall be promulgated separately.

SEC. 4. *Policy.* The local easement policies herein set forth will be applied to protect the public interest in land conveyed to Natives and Native corporations pursuant to the Alaska Native Claims Settlement Act and to meet the requirements of public law.

Local public easements will be reserved for public and governmental uses. Local easements in behalf of the general public for recreation, access, transportation, utilities, airports, and aircraft landing sites will be reserved only on the basis of present existing use with the following exceptions: (1) the reservation of a continuous shoreline easement extending 25 feet above mean high tide along the marine coastline of the State; and (2) the reservation of easements to assure present and future access to all public lands and resources. These exceptions describe the only local easements in behalf of the general public to be reserved for other than present existing uses. Scenic easements will not be reserved. Periodic linear and site easements for recreation purposes on rivers and streams and site easements on lakes will be reserved only to the extent necessary to provide continued public use of areas having highly significant present recreational use.

Whenever it is determined that an easement will adequately serve a government need in lieu of retention of title to the land pursuant to section 3(e)(1) of the ANCSA, an easement will be reserved to (a) protect existing uses, or (b) protect presently planned uses.

Easements will be precisely located whenever possible except in those instances where this would result in a substantial delay in the issuance of conveyances. Local public easements, especially existing transportation and utility easements, will be located in close proximity wherever possible. For this purpose, corridors carefully delineated in accordance with 43 CFR 2650.4-7(b)(4) may be used to permit the subsequent identification of the precise location of each easement. Local easement corridors will be specifically identified as to location, size, and use in terms of the public easements to be contained therein.

Local easement corridors may be delineated by aliquot parts or by other means necessary to accommodate the easements. When the specific identification and definite location of all the easements within a corridor are made, those portions of the corridor reservation not used by the easements will be relinquished.

Easement provisions in interim conveyances and patents will identify uses through commonly accepted terminology, e.g., trail or road. When necessary, additional descriptive terms may be added to further identify uses. All easements shall be reserved to the United States and subject to further regulation thereby.

The term "public easements" will include public use, access, transportation, recreation, communication, and utility easements as may be defined in State or Federal law or through historical usage. The authority granted in ANCSA to reserve public easements will be exercised to protect the public interest, including but not limited to, their right of access to and use of public land and public resources. All conveyances will be made subject to all rights of access preserved under section 17(b)(2) of the ANCSA. Identification and reservation of public easements shall include consideration of the need to assure access to Federal or State lands and resources (including the need to reserve easements for full right of access to the reserved subsurface) or land which is subject to public use.

Special consideration as to the location of such easements will be given to the effect of a proposed easement on Native lifestyle and subsistence needs. The environment and other relevant factors will also be considered. Alternative routes and modes of access will be assessed. All public easements will be periodically reviewed to determine if they continue to be required or if they should be vacated.

It should be noted that the right of the United States to enter lands conveyed to the Natives will be reserved in the patent for cadastral, geodetic, or other survey purposes. Easements reserved for this purpose will be a general right of entry for such survey purposes along with the right to do all things necessary in connection therewith.

Determinations of easements to be reserved will be made after review of the recommendations of the Federal-State Land Use Planning Commission, other Federal Agencies, the State, the Natives, and the general public. Consideration will be given to requests for easement reservations which are timely submitted to the Bureau of Land Management accompanied by written justification.

Detailed guidelines follow to further assist the State Director in the proper discharge of the Department's responsibility for easement identification and reservation.

SEC. 5. *Guidelines.* (a) In identifying appropriate easements, an assessment must be made of the public use or purpose to be accommodated and the type of easement proposed. This order lists situations which form the basis for identification of specific easements to be reserved. However, it is not intended that such examples are all inclusive.

(b) The size of specific easements will be governed by standards set forth in applicable laws and regulations. In the absence of a controlling statute or regulation, the following standards will be followed as general guidelines, taking into account the purposes for which the easement might be reserved. Standard sizes delineated here may be varied when such a variance is justified by specific conditions.

(1) *Roads and trails.* The usage of roads and trails will be controlled by applicable State or Federal law or regulation. The usages listed in these guidelines will not be listed in the conveyance either as prohibited or permitted usages of the easement but instead will be used for the purpose of determining the width of the easement to be reserved.

(A) The width of a trail will be 25 feet if the usages to be accommodated are for travel by foot, dogsleds, horseback, small vehicles, and uses of a similar character.

(B) The width of a trail will be 50 feet if the usages to be accommodated are for travel by all-terrain vehicles, track vehicles, 4-wheel drive vehicles, and uses of a similar character in addition to the uses included under (A) above.

(C) The width of a road will be 60 feet if the usages to be accommodated are for travel by automobiles or trucks and similar vehicles within a community.

(D) Major traffic arteries or roads connecting communities or regions will be 100 feet in width

(2) *Marine coastline.* In order to provide public access to and along the marine coastline and use of such shore for purposes such as the beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses, a continuous linear easement 25 feet in width

upland of and parallel to the mean high tide line shall be reserved, subject to the limitations and conditions contained hereafter in subparagraph (c)(2).

(3) *Recreational rivers and streams.* To provide for public use of rivers and streams having highly significant present recreational use, easements 25 feet in width shall be reserved along the bank or banks of such rivers and streams. In addition, such reservations on nonnavigable recreatonal rivers and streams shall include the river or stream bed.

(4) *Campsites and beaching sites.* Easements may be reserved for boat and float plane pullout areas upon a shore. Also, easements may be reserved for temporary camping sites upon a shore or along a linear access route or within a reasonable distance of such shore or route. Easements for the beaching of boats and float planes, and temporary campsites shall be one acre, more or less, except where terrain, sanitation, public safety, or intensity of public use require deviation. When appropriate, access routes to and from such beaching or camping sites shall be provided.

(5) *Other easements.* Other easements may be identified, the size of which is not controlled by any applicable law or regulation. The size of such easements for any given purpose may vary from place to place depending upon the particular circumstances. When not controlled by applicable law or regulation or this order, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. A nonexclusive list includes easements for railroad sidings, spurs, and stations; electric or electronic transmission or reception; communication systems; local water, gas, or sewer systems; docks; navigational aids for watercraft or aircraft; aircraft landing sites not covered under section 14(c)(4) of the ANCSA; avigation; and weather stations.

(c) This subparagraph includes a nonexclusive series of situations in which easements should be reserved pursuant to the policies enumerated in this order. The right to hunt will not be reserved on any lands conveyed pursuant to ANCSA. However, the availability of hunting on Federal or State lands will be a factor to be considered in reserving other easements hereinafter listed.

(1) *Access.* Easements for access by the government and the general public shall be reserved across Native lands to Federal and State facilities, resources, lands, and waters, including the ocean. Easements for access by the government and the general public may be reserved, when reasonably necessary, across Native lands to provide access to and from communities, airports, docks, boat and float plane beaching sites, reserved aircraft landing sites, campsites, water transportation routes, groups of private holdings, reserved easements for reservations and developments constituting a public use. All easements shall follow existing routes of travel when possible. Easements for rest areas and temporary camping sites will be reserved when reasonably necessary in conjunction with routes of travel. Whenever there is not an existing route of travel, easements should be reserved in topographically suitable locations.

(2) *Marine coastline.* (A) The easement along the marine coastline described heretofore in subparagraph (b)(2) will not be reserved if it is determined prior to conveyance that it is impracticable for use by the general public. If it is reserved and is later determined to be impracticable, it will be relinquished.

(B) In the original reservation, deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction.

(C) A marine coastline easement shall be reserved subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement reserved. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route at no cost to the United States, prior to the creation of such obstruction.

(D) Access to the ocean as a public resource will be provided on National Wildlife Refuge System lands in consonance with the rules and regulations of each refuge. Seasonal and/or temporal closures of such access routes may occur when required to protect wildlife values.

(3) *Recreational rivers and streams.* The easement described in subparagraph (b)(3) heretofore may be reserved when it is determined that there is highly significant present recreational use of a river or stream for sport fishing, boating, portage, or other water related recreational activities. Highly significant present recreational use on a portion of a river or stream will justify the reservation of linear easements only on that portion where such use actually occurs and not on the entire waterway. When reasonably necessary for general public use and emjoyment of the recreational easement, additional easements may also be reserved for temporary campsites, sanitation facilities, or access to the recreational area.

The determination of highly significant present recreational use will take into account numerous factors. A river or stream need not meet all criteria to be considered as having highly significant present recreational use. The factors to be considered shall include (a) the volume of use (at least several users each year), (b) the variety of recreational experiences, (c) the uniqueness of the experiences (e.g., where trophy-sized fish or a specific species of fish may be caught), or (d) the overall quality of the experiences (e.g., white water canoeing or inspiring scenery).

(4) *Beaching sites.* Site easements may be reserved at suitable locations on the bed and shore of lakes, rivers, streams, bays, and the marine coastline when determined to be reasonably necessary for public travel along water transportation routes or when necessary for use as a boat or floatplane beaching site. Site easements may also be reserved to provide connections from water transportation routes to land transportation routes.

(5) *Lakes.* Site easements may be reserved at suitable locations on the bed and shore of lakes for public utilization of the waterbody. Site easements may be reserved on lakes greater than 640 acres in area where reasonably necessary. Site easements will not be reserved where reasonable access can be provided on publicly owned waterfront. Site easements will not be reserved on lakes under 640 acres in area unless such waters have unusual recreational or transportational value for public use.

(6) *Utility, communication, weather, and appurtenant easements.* To the extent reasonably necessary, in order to protect present existing uses, easements will be reserved for utility, communication, and weather purposes. Appurtenant easements may also be reserved.

(7) *Aircraft landing sites.* Aircraft landing sites which are presently being used but which do not qualify as airports under section 14(c)(4) of the ANCSA may be reserved as are reasonably necessary for public access or safety. Associated space easements may also be reserved.

(8) *Space easements.* Space easements may be reserved as needed to insure public safety or to permit proper use of improvements developed for public benefit or use, such as navigational aids or communication sites.

(9) *Agreements.* In addition to the foregoing, the State Director is also authorized to reserve any easements necessary to insure protection of international treaty obligations and to implement any agreement entered into between the United States and the Native or Native corporation receiving the conveyance. For example, the agreement of May 14, 1974, related to Naval Petroleum Reserve Number Four, between the United States Department of the Navy and the Arctic Slope Regional Corporation and four Native village corporations, will be incorporated in the appropriate conveyances and the easements necessary to implement said agreement shall be reserved.

SEC. 6. *Procedures.* The following administrative procedures are designed to provide an organized method of handling land conveyances and the discretionary aspects of public easement reservations under the Alaska Native Claims Settlement Act (ANCSA). A selection application may be processed in part at any time so that conveyance can be made at the earliest practicable time for those portions having no conflict.

These procedures shall be used as a guide when identifying and reserving public easements and issuing decisions to convey under ANCSA. The identification of public easements to be reserved under section 17(b) of ANCSA shall be conducted concurrently with the processing of other regulatory land selection requirements.

The identification of needed easements will include participation by the Natives, State, Federal Agencies, and others having an interest in easements.

The BLM District Manager shall transmit identified easement needs to the BLM State Director. After reviewing the identified easement needs, the State Director shall determine which easements will be reserved.

The State Director will then notify all parties that participated in the development of the easement needs, including the Natives, the State of Alaska, the Federal-State Land Use Planning Commission, and interested Federal Agencies, as to the proposed easement reservations. This notice shall direct that all comments be sent to the Commission and the State Director.

It is expected that the Commission and the State of Alaska will furnish their recommendations on the proposed easement reservations within the time prescribed by regulations. If a recommendation is not submitted by the Commission or the State within the time period established by regulations, 43 CFR 2650.4-7(d), the State Director may proceed.

The BLM State Director shall review the Commission's recommendations and the comments from other interests. If there are significant differences between the State Director, the recommendations, and the comments from other interests, he may submit the easement reservation question to the Director, BLM, for final determination by the Department of the Interior. Otherwise, he will issue a decision to convey that includes easements that will be reserved and all other terms and conditions relating to conveyance of the land.

The decision to convey shall be served on all parties having a property interest in land affected by the determination. The Alaska Native Claims Appeal Board (ANCAB) will review decisions pursuant to section 17(b)(3) of ANCSA only to determine whether the decision to reserve was arbitrary or capricious.

Where no appeal has been timely filed on decisions to convey or where ANCAB has rendered its decision on an appeal, the BLM State Director may issue the conveyance.

SEC. 7. *Limitations.* The actions of the State Director under this delegation shall be subject to supervision and review by the Director, Bureau of Land Management.

SEC. 8. *Effective date.* This order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

Dated: February 5, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-4078 Filed 2-11-76;8:45 am]

Published in 41 F.R. 6295, February 12, 1976.

GPO 835-158

Office of the Secretary

[Order No. 2987]

ALASKA

Reservation of Easements for the Transportation of Energy, Fuel, and Natural Resources

Section 1. *Purpose.* The purpose of this order is (a) to establish policy for reserving easements for the transportation of energy, fuel, and natural resources in the State of Alaska pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708), and (b) to direct the State Director, Bureau of Land Management, Alaska, to reserve such easements for the use of the United States.

Section 2. *Direction.* The State Director, Bureau of Land Management, Alaska, is hereby directed to reserve the following described easement to the United States in all conveyances made pursuant to the ANCSA on mainland Alaska (excluding that portion of the southeastern region lying south and east of the former section 16 withdrawal for the village of Yakutat). The easement shall be for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. The easement here described shall include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of any easement reserved pursuant to this order shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easement will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of the easement reserves pursuant to this order that are actually in use or that are expressly authorized on the twentieth anniversary of this order shall continue to be in force.

Section 3. *Scope.* This order deals with easements for the transportation of energy, fuel, and natural resources. Instructions for the reservation of local public easements were promulgated by Secretarial Order No. 2932, dated February 5, 1976, and published in the FEDERAL REGISTER on February 12, 1976.

Section 4. *Determination of the Nonlocal Easements Which Are Necessary for Public Use.* Pursuant to the authority vested in the Secretary of the Interior under section 17(b) of the ANCSA, the following determinations have been made concerning nonlocal easements which are necessary for public use:

1. There is a national need to expedite the transportation of energy, fuel, and natural resources in order to meet the national energy crisis;

2. The routes of such transportation should be precisely and carefully planned;

3. The number of options or alternatives available as possible routes should be maximized in order to preserve optimum choices;

4. Federally owned energy, fuel, and natural resources should be developed, transported, and delivered without unreasonable expense or delay to the Federal Government along routes that are under Federal control in order that environmental protection and public safety can be maintained;

5. Privately owned energy, fuel, and natural resources that are being developed for a profit should not be afforded extraordinary privileges across private property. Therefore, easements should not be reserved by the United States in conveyances to Alaska Natives for the benefit of such privately owned energy, fuel, and natural resources;

6. The further delay in ascertaining the routes to be used by or for the United States will detrimentally affect those entitled to receive conveyances pursuant to the ANCSA;

7. All prior studies of potential transportation routes have disclosed that few, if any, islands off the coast of Alaska or the southeastern panhandle of Alaska will be utilized in the transportation of energy, fuel, and natural resources regardless of whether the energy, fuel, and natural resources are ultimately transported by sea or across Canada. Therefore, easements should not be reserved on such islands or in the southeastern panhandle of Alaska south and east of the section 16 withdrawal for the village of Yakutat;

8. The best way to accomplish the foregoing would be to reserve easements on mainland Alaska (excluding that portion of the southeastern region lying south and east of the former section 16 withdrawal for the village of Yakutat) in behalf of the United States to cross all the land conveyed pursuant to the ANCSA rather than delineating selected narrow corridors for such rights-of-way at this time;

9. Strict compliance with the regulations, 43 CFR 2650.4–7, should be waived provided that the rights of each grantee set forth in 43 CFR 2650.4–7(b)(2), (c)(1), and (c)(2) should still be preserved in the conveyance.

Section 5. *Waiver of Regulations.* Pursuant to the provisions of 43 CFR 2650.-0–8, the provisions of 43 CFR 2650.4–7 are hereby waived provided that the rights of each grantee set forth in 43 CFR 2650.4–7(b)(2), (c)(1), and (c)(2) are preserved in the conveyance.

Section 6. *Limitations.* The actions of the State Director under this delegation shall be subject to supervision and review by the Director, Bureau of Land Management.

Section 7. *Effective Date.* This order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

Dated: March 3, 1976.

Prepared for publication in the FEDERAL REGISTER.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76–7675 Filed 3–17–76;8:45 am]

Published in 41 F.R. 11331, March 18, 1976.

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2390]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Prospecting Permits; Issuance of Leases

1. 43 CFR Subpart 3520 is amended by revising § 3520.1–1 to read as follows:

§ 3520.1–1 Preference right leases.

(a) *Coal, phosphate, sodium, sulphur, and potassium* (1) The authorized officer shall issue a lease to the holder of a prospecting permit issued for phosphate, sodium, sulphur, or potassium if the permittee shows to the authorized officer that, within the term of the permit, he discovered a valuable deposit of the mineral for which the permit was issued, or for a prospecting permit issued for coal, if the permittee shows to the Secretary that he discovered commercial quantities of coal. (2) If the permit is for sodium, sulphur, or potassium, the authorized officer may not issue a lease unless the permittee also shows that the land is chiefly valuable for the development of the mineral deposit discovered.

(b) *Lease area.* The lease shall be for all or part of the lands in a reasonably compact form.

(c) *Standards to determine "valuable deposit" and "commercial quantities."* A permittee has discovered commercial quantities of coal or a valuable deposit of one of the other permit minerals if the mineral deposit discovered under the permit is of such a character and quantity that a prudent person would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The permittee must present sufficient evidence to show that there is a reasonable expectation that his revenues from the sale of the mineral will exceed his costs of developing the mine, and extracting, removing, and marketing the mineral.

(d) *Applicability.* The standard in paragraph (c) of this section shall apply to all future applications for leases by prospecting permittees, and to applications pending on the effective date of this regulation. Leases which have been issued prior to that date may not be reexamined to determine whether they meet the standards in paragraph (c) of this section.

2. 43 CFR Subpart 3521 is amended by revising § 3521.1–1 and adding §§ 3521.1–4, and 3521.1–5 to read as follows:

§ 3521.1–1 Forms.

(a) (1) An application for a lease by a prospecting permittee shall be filed within 30 days after the permit expires.

(2) If a permittee needs additional time to submit the information required by section 3521.1–1(b) of this part and files, within 30 days after the permit expires or within 60 days from the effective date of these regulations, whichever is later, a notice of application and request for extension of time, the authorized officer shall extend the time for submitting the required information for the period requested, but for not more than one year.

(b) *Initial showing.* The initial application for a lease shall contain the following information:

(1) The quantity and quality of the minerals discovered within the area included within the permit. The term "quantity of minerals" means only measured and indicated reserves. Structural maps of the tops of all beds to be mined; isopachous maps of beds to be mined and interburden; and isopachous maps of overburden (for beds to be mined by surface methods). These maps shall show the location of test holes and outcrops. Estimates of measured and indicated reserves for each bed to be mined must also be submitted. Coal quality data submittals shall include, as a minimum, an average proximate analysis and BTU content for coal beds, or average grade of the ore for other minerals. In addition, all supporting geological and geophysical data used in development of the above required information shall be submitted.

(2) A map, or maps, as may be available from State or Federal sources, which shows the topography of the land applied for, on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the appropriate locations and areal extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(3) A narrative statement, including:

(i) The anticipated scope, method, and schedule of development operations, including the types of equipment to be used;

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed;

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands;

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for, and of known geologic, visual, cultural, or archaeological features, and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations; and

(v) A brief description of the proposed measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations which the applicant wishes to have considered by the authorized officer.

(c) *Final Showing.* After the permittee receives the technical environmental analysis report and proposed lease form prepared in accordance with § 3521.1–5 of this subpart, he shall submit the following information:

(1) Estimated revenues;

(2) All the estimated costs that a prudent person would consider before deciding to operate a mine, including the cost of:

(i) Developing the mine;

(ii) Removing the mineral;

(iii) Processing necessary to place the mineral in a saleable condition;

(iv) Transporting the mineral product to the point of sale (f.o.b.);

(v) Applicable royalties and taxes; and

(vi) Complying with existing governmental regulations, reclamation and environmental standards, and proposed lease terms;

(3) A comparison of estimated costs and estimated revenues; and

(4) If the permittee intends to mine the deposit in the land covered by the permit as part of a logical mining unit in conjunction with related deposits, the permittee's showing may include the estimated costs and revenues of the combined mining venture.

Published in 41 F.R. 18845, May 7, 1976 - Effective May 7, 1976.

Circular Distribution List

(d) *Additional showing for permits issued for potassium, sodium, and sulphur.* In addition, if the prospecting permit was granted for sodium, sulphur, or potassium, the lease application shall also contain sufficient information to show that the land is chiefly valuable for the development of the mineral deposit discovered.

(e) *Amount of detail required.* The information submitted by the permittee shall be sufficient to enable the authorized officer to ascertain whether the permittee's showing has a reasonable factual basis and supports his assertion that:

(1) He has found commercial quantities of coal if the permit was issued for coal; or

(2) He has found a valuable deposit of the minerals covered by the permit if the permit was issued for a mineral other than coal; and

(3) The land is chiefly valuable for the mineral deposit if the permit was issued for sodium, sulphur, or potassium.

(f) *Rental to be submitted.* The initial application must be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof except that:

(1) Sulphur. The application shall be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof.

(2) Solid (hardrock) minerals. The application shall be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20.

(g) *Action if additional information is needed.* (1) If the permittee has not submitted the information this section requires, the authorized officer shall inform the permittee of the omissions and shall give the permittee an opportunity to submit the necessary information. The request for additional information shall specify:

(i) The information the permittee has failed to provide; and

(ii) The date by which the permittee must submit the omitted information, but the authorized officer shall allow no less than 60 days for a response.

(2) The authorized officer may grant the permittee an extension of time to respond to a request for additional information if the permittee requests an extension before the expiration of the period originally stated.

(3) The authorized officer shall reject the lease application if the permittee does not respond to a request for information on time.

(h) *Action if showing is satisfactory.* The authorized officer shall issue a lease to the permittee, if, after reviewing the lease application, he determines:

(1) That the permittee has presented information that has a reasonable factual basis, and the information supports the permittee's assertion that:

(i) He has found coal in commercial quantities if the permit was issued for coal; or

(ii) He has found a valuable deposit of the mineral covered by the permit if the permit was issued for a mineral other than coal; and

(iii) If the permit was issued for sodium, sulfur, or potassium, that the land is chiefly valuable for the mineral deposit; and

(2) That the permittee has taken into account all the factors required by this section.

(i) *Basis for denial of lease application.* The authorized officer may reject the application and inform the permittee of the grounds for the rejection, or request additional information under the procedures in paragraph (g) of this section if he determines that the evidence submitted by the permittee does not support his assertion that:

(1) He has found commercial quantities of coal if the permit was issued for coal; or

(2) A valuable deposit of the mineral covered by his permit if the permit was issued for mineral other than coal; or

(3) If the permit was issued for sodium, sulphur, or potassium, that the land is chiefly valuable for the mineral deposit.

(j) *Hearing and appeal procedures.* (1) If the permittee's application is rejected, he may file a notice of appeal and statement of reasons for appeal in accordance with the procedures of 43 CFR Part 4.

(2) The permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals if he has alleged, in his application, facts sufficient to show that he is entitled to a lease.

(3) At the hearing the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered coal in commercial quantities, or a valuable deposit of one of the other minerals, and if his application is for a sodium, sulphur or potassium lease, that the land is chiefly valuable for the mineral deposit discovered.

§ 3521.1–4 Technical examination/environmental analysis.

In connection with an application for a lease, the authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis.

(a) The technical examination shall include: (1) an examination of the technical aspects of the proposed operations set forth in the lease application; and

(2) an evaluation of the impacts of such operations on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in lease application.

§ 3521.1–5 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land where reclamation is not attainable or assured; (2) measures required to comply with the reclamation and performance standards set forth in Subpart 3041 of this Chapter; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, or license; (4) any additional, more stringent requirements needed in the lease pursuant to § 3041.2–2(a) of this Subpart; and (5) proposed lease terms and stipulations.

(b) The authorized officer shall send a copy of this report to the lease applicant.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76–13284 Filed 5–6–76;8:45 am]

☆GPO 1976-678-697-664 /8

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2391]

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

PART 3860—MINERAL PATENT APPLICATIONS

Miscellaneous Amendments

1. The heading of § 2741.4 is revised to read as follows:

§ 2741.4 Applications for transfer, change of use, renewal of leases; and for new leases under the Act of June 20, 1966

§ 2811.1 [Amended]

* * * * *

2. In § 2811.1 the phrase "officer in charge" is amended to read "authorized officer."

§ 2812.0–6 [Amended]

3. In § 2812.0–6(h) the words "district forester" are revised to read "authorized officer" and the word "paragraph" is revised to read "subpart"

§ 2812.1–1 [Amended]

4. In § 2812.1–1(b) the phrase "appropriate district forester" is amended to read "authorized officer."

§ 2812.4–4 [Amended]

5. In § 2812.4–4(c) the phrase "appropriate district director" is amended to read "authorized officer."

§ 2812.7 [Amended]

6. In § 2812.7 the phrase "appropriate district forester" is amended to read "authorized officer."

7. The heading of 3862.4–1 is revised to read as follows:

§ 3862.4–1 Newspaper publication.

* * * * *

JACK O. HORTON,
Assistant Secretary of the Interior.

MAY 20, 1976.

[FR Doc.76–15401 Filed 5–26–76;8:45 am]

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COAL MINING OPERATING REGULATIONS

[Circular No. 2392]

A new subpart 3041 is added to Part 3040 of 43 CFR, to read as follows:

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3040—ENVIRONMENT AND SAFETY

Subpart 3041—Surface Management

FEDERAL COAL RESOURCES

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§ 3041.0–1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0–3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such operations.

(b) It is the policy of the Department to encourage the development of Federally owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases, permits, and licenses for coal only where reclamation of the affected lands to the standards set forth herein is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations. Departmental policy regarding privately owned surface where the mineral estate is Federally owned is that any mineral activity on the private surface should be conducted to result in protection of environmental values which is at least as stringent as would apply to Federally owned surface.

§ 3041.0–3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321–47). Additional regulations governing the issuance of Federal coal leases, permits, and licenses are found in 43 CFR 3500 of this Chapter, including the specific requirement in § 3501.2–6 that the consent of the Department of Agriculture or other Federal surface managing agency be obtained with respect to leases, permits, and licenses covering acquired lands subject to the jurisdiction of such agency. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of the Chapter.

§ 3041.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases, permits, and licenses are to be issued. The BLM is responsible for issuing coal leases, permits, and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate amounts of bonds; royalties; unit values; rentals; mineral resource evaluations; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and permits.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases, permits, and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2–2 of these regulations and in 30 CFR 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee, permittee, or licensee with the requirements of this Subpart, and the terms and conditions of a lease, permit, or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee, permittee, or licensee with the terms and conditions set forth in the provisions of any lease, permit or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly

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provided for in § 3041.7 of this Subpart and 30 CFR 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease, permit, or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of this subpart. Any disagreements that cannot be resolved between the GS and the BLM arising in connection with any such issuance of a lease, permit or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Any such disagreements between an authorized officer of the BLM and an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior will be referred for resolution to comparable higher authorities in each agency, and, if necessary, to the respective Departments, for final resolution.

§ 3041.0–5 Applicability.

(a) This Subpart sets forth regulations governing leasing, permitting, and licensing procedures, reclamation standards, use of surface, bond requirements, and reports relating to leases, permits, and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter I.

(b) The provisions of this subpart shall become effective upon the date of publication in the FEDERAL REGISTER as final rulemaking, except as hereinafter provided.

(1) Existing operations. (i) On and after 180 days from the effective date of this subpart, the provisions of §3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this paragraph shall not be deemed or construed so as to apply the requirements of § 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this subpart and for which a variance pursuant to the provisions of § 3041.2–2(f) (2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under Section 102 (2) (C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this subpart shall apply immediately upon the effective date of this subpart.

(c) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by paragraph (b) (1) (i) above.

(d) Nothing in this subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this subpart.

§ 3041.0–6 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Acid or toxic producing materials" means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentrations to individually or in combination adversely affect the environment.

(b) "Affected lands" means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) "Approximate original contour" means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) "Area of operations" means that area of the leased, permitted, or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) "Authorized officer" means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases, licenses, and permits and to the provisions of this subpart.

(f) "Coal" includes coal of all ranks from lignite to anthracite.

(g) "Compaction" means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) "Contemporaneously as practicable" means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing opreations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this subpart.

(i) "Daylighting" is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) "Director" means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) "Exploration" means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) "Exploration plan" means a detailed plan submitted to the Mining Supervisor for approval before exploration

operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such appropriations.

(m) "General Coal Mining Order" means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) "Impoundment" means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in an approved plan.

(o) "Leased lands, leased premises, or leased tract" means lands embraced within a coal lease and subject to the regulations in this subpart.

(p) "Lessee" means any person or persons, partnership, association, corporation, or municipality to whom a coal lease is issued, subject to the regulations in this subpart, or an assignee of such lease under an approved assignment.

(q) "Licensee" means any individual, association of individuals, or municipality to whom a coal license is issued pursuant to the provisions of section 20 of Title 30 of the United States Code.

(r) "Logical mining unit" means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) "Method of operation" means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) "Mine" means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) "Mining plan" means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) "Notice of Availability" means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) "Notice of noncompliance" means a written notice of operator noncompliance issued pursuant to § 211.72 of 30 CFR Part 211.

(y) "Operator" means a lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(z) "Overburden" means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) "Permanent abandonment" means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease, permit or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) "Permit lands" means lands embraced within a coal prospecting or other permit and subject to the regulations in this subpart.

(cc) "Permittee" means any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting or other permit subject to the regulations in this subpart is issued, or an approved assignee of such permit.

(dd) "Pollution" means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) "Post mining land use" means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) "Preliminary data" means data, consisting of maps and text, submitted by an applicant for a lease, permit, or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) "Preparation" means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this subpart.

(hh) "Reclamation" means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) "Road" means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) "Secretary" means the Secretary of the Interior.

(kk) "Significant vegetation" means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) "Spoil" means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this subpart.

(mm) "Subsidence" means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) "Surface owner" means an entryman, or a person or persons who hold legal title to the land surface.

(oo) "Topsoil" means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) "Valley floors" means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) "Waste" means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease, permit, or license as is deemed necessary and has been designated in an approved plan. This subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably inter-

fere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.1 Coal leasing, permitting, and licensing planning procedures.

(a) When an area is initially considered for coal development the appropriate authorized officer shall make an environmental analysis of the potential effect of such development upon the resources of the area and its environment, pursuant to Section 3041.2 hereof.

(b) Prior to the selection of tracts for coal leases, permits, or licenses the appropriate authorized officer shall evaluate the potential effects of all phases of such coal development on the environment, including effects on fish and other aquatic resources, wildlife habitats and populations, and visual, recreational, cultural, and other resources in the affected area. This evaluation shall take into account alternative uses of the land and its natural resources, the need for the proposed coal development, and the socio-economic considerations relevant to multiple-use management principles. To aid him in this evaluation and in the selection of coal lease, permit, or license tracts, such authorized officer shall issue a call for information and nominations for tracts to be leased competitively and for areas which should not be leased, as set forth in Subpart 3520 of this Chapter, and shall request and consider the views and recommendations of the Geological Survey and other appropriate Federal agencies; may hold public hearings after appropriate notice, and shall consult with applicants, nominators, State and appropriate local agencies, organizations, industries, and surface owners if other than the United States.

(c) If the Director determines that a decision to consider areas for coal development or to select tracts to offer for leases, permits, or licenses would be a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has not been prepared with respect thereto, such a statement will be prepared.

(d) If National Register or eligible National Register cultural resources might be affected by the issuance of coal leases, permits or licenses, none will be authorized until compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. § 470f) and section 2(b) of E.O. 11593 of May 13, 1971 (36 FR 8921; 16 U.S.C. § 470 fn.) has been accomplished.

(e) If a decision is made to offer tracts for coal leases, permits, or licenses, the appropriate authorized officer may, following the procedures in § 3041.2 of this Chapter, develop and include in such offer such special terms and conditions as may be required by specific local conditions to protect the environment, to permit use of the land for other purposes, to allow post mining land uses, and to protect other resources. The authorized officer, in consultation with the Mining Supervisor, the appropriate authorized officer of any surface managing agency other than BLM and the surface owner if other than the United States, shall include in the terms and conditions of any permit, lease or license such specific requirements as may be necessary to meet exceptional and special circumstances relating to the lands covered thereby, including degree of slope, soil conditions, and other site characteristics.

(f) Geological and geophysical data and information, including maps, that may be used to calculate coal reserves in place, and trade secrets and commercial and financial information obtained from any person under this subpart which is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the permittee, licensee, lessee or operator, provided however that upon termination of a permit, lease or license, whether by expiration of its terms or otherwise, or final abandonment of operations, resource and reserve data and information that may be used to calculate coal reserves in place submitted and so identified as privileged or confidential may be made available for public inspection or made public or disclosed. As used in this section, "resource and reserve data and information" means geological and geophysical data and information, including maps, relating to the coal deposits within the permit or leased lands or covered by an approved plan which is abandoned. Requests for inspection of resource and reserve data and information shall be made in accordance with the regulations set forth in 43 CFR Part 2, which implement the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 3041.1–1 Applications.

(a) Any person who desires a lease, permit or license for coal development to be issued on his own motion shall file an application in the proper BLM office, in accordance with the regulations in this Chapter.

§ 3041.1–2 Preliminary data.

(a) Any application for coal lease, permit, or license filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental analysis as described in § 3041.2. Provided, however, that in lieu of the requirements of this paragraph, applicants for competitive coal leases offered pursuant to the BLM Energy Minerals Activity Recommendation System (EMARS) will be required to fulfill the requirements of Subpart 3521 of this Chapter.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental analysis, may request additional information from the applicant.

§ 3041.2 Technical examination/environmental analysis

In connection with an application for a coal lease, permit or license, or on BLM motion, the appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis of the area covered by such application, pursuant to the provisions of this section.

(a) The technical examination shall include: (1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion,

the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease, permit, or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5 year period of the lease, permit, or license; (4) any additional, more stringent requirements needed in the lease, permit, or license pursuant to § 3041.1(e) of this subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease, permit, or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease, permit, or license shal lcomply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease, permit or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease, permit, or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt, measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this subpart:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of paragraphs (1) and (2) of this subsection may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plan species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this paragraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treat-

ing drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.2–2(f)(5) of this subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing aquifiers or aquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with paragraph (f)(4) of this section; and revegetate in accordance with paragraph (f)(13) of this Section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize, control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or private property.

(12)(i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this subpart and as set forth in an approved plan.

(13)(i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regraded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with paragraph (i) of this subsection has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subsection 3041.6(b)(2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with

such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease, permit, or license.

(b) Prior to issuing a lease, permit, or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2–2, and with the terms and conditions of the lease, permit, or license.

(c) An application for a lease, permit, or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been reclaimed without cost to the Federal Government. Nothing in this paragraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease, permit, or license.

(d) Once a lease, permit, or license has been issued the authorized officer, after consulting with and receiving the recommendation of the Mining Supervisor, shall take such action as may be necessary to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease, permit, or license.

§ 3041.4 Procedures and public participation.

(a) Written findings. Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) Availability of documents. Any application for a lease, permit, or license, together with the proposed terms, conditions, and special stipulations and any preliminary data submitted under § 3041.1–2 and reports made pursuant to § 3041.2 of this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) Public participation. (1) Upon the timely written request to the appropriate authorized officer of any person having an interest which is or may be adversely affected, a public meeting shall be conducted prior to issuance of a lease subject to the provisions of these regulations or determination of any specific terms and conditions thereof. A public meeting may be conducted prior to approval of final abandonment, including release of bonds, of any operation or portion thereof.

(2) Prior to the making of any decision or the taking of any action described in subparagraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of two consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posed at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey, mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the FEDERAL REGISTER. Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the FEDERAL REGISTER, within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to such public meeting, the appropriate officer shall take into account all testimony submitted at such meeting, including any written comments submitted for the record. All such decisions and actions shall be subject to appeal pursuant to the provisions of Part 1850 of this Title.

(4) The public meeting requirements of paragraph (c) (1) of this section shall be deemed to have been satisfied if (a) a public hearing has been conducted upon an environmental statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, or (b) public meetings in connection with a proposed Bureau of Land Management land use plan covering the affected lands, or in connection with selection of tracts for coal leasing under the Bureau's Energy Minerals Activity Recommendation System (EMARS) have been conducted, and provided that during such hearing or public meetings, all major issues and proposed terms and conditions have been considered, and with respect to which hearing or public meeting all notice requirements of this section have been met.

§ 3041.5 Completion of operations and abandonment.

(a) Grading and backfilling. Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) Temporary abandonment. In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective

measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) Permanent abandonment. Before permanent abondonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2–2(f) (11) of this subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) Notice of abandonments release of bond. (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has complied with all such terms, conditions and requirements and the regulations of this subpart, the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) Operations. The operator shall file with the Mining Supervisor, within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) Revegetation. (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR § 211.62(b) (2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this subpart under lease, permit, or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72 (c), such authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure to the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in paragraphs 3041.2–2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2–2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Supported by commitments and assured of investment from public agencies where appropriate;

(iii) Practicable with respect to private financial capability for completion of the proposed development;

(iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use;

(v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this Section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this Section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this Section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this Section only by submitting a new or revised mining plan to the Mining Supervisor for approval pursuant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2–2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this Section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any Management Framework Plan or equivalent land use plan.

Part 211 of 30 CFR is revised to read as follows:

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

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211.1 Scope and purpose.
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MAPS AND PLANS

211.10 Exploration and mining plans.
211.11 Approaching oil, gas, or water wells.
211.12 Mine maps.
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PROSPECTING AND EXPLORATION OPERATIONS

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211.30 Maximum recovery.
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211.32 Multiple seam mining.
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211.35 Pillars left for support.
211.36 Development of leased tract through adjoining mines.

RECLAMATION AND PERFORMANCE STANDARDS

211.40 Operating and reclamation standards.
211.41 Completion of operations and abandonment.

REPORTS, RECORDS, ROYALTIES AND AUDITS

211.62 Reports.
211.63 Value basis for royalty computation.
211.64 Weight basis for royalty computation.
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211.66 Maintenance of and access to records.

INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT OF ORDERS AND APPEALS

211.70 Inspection.
211.71 Notices and orders.
211.72 Enforcement of orders.
211.73 Appeals.
211.74 Variances.
211.75 Applicability of State law.

§ 211.1 Scope and purpose.

(a) The regulations in this Part shall govern operations for the discovery, testing, development, mining, preparation, and handling of coal under leases, licenses, and permits issued for federally-owned coal, regardless of surface ownership, pursuant to the regulations in 43 CFR Group 3500 and the Alaska Coal Leasing Act of October 20, 1914, as amended (38 Stat. 741; 48 U.S.C. 432–445); and for the reclamation of lands disturbed by such operations. Except as may otherwise be provided in 25 CFR Chapter I, these regulations do not apply to operations for the discovery, testing, development, mining, preparation, and handling of coal in tribal and allotted Indian lands under leases and permits issued under the regulations in 25 CFR Parts 171, 172, and 174.

(b) The purpose of the regulations in this Part is to assure orderly and efficient prospecting, exploration, testing, development, mining, preparation and handling operations, and production practices, without avoidable waste or loss of coal or other mineral resources or damage to coal-bearing or other mineral-bearing formations, and without undue duplication or administrative delay by Federal officers and agents in review, approval or other actions provided for by this Part; to encourage maximum recovery and use of coal resources; to protect the public health and safety and to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize, so far as practicable, the adverse social, economic, and environmental effects of such operations; to require effective reclamation of affected lands as contemporaneously as practicable with coal development; to assure that all such operations which involve significant surface disturbance take place only pursuant to plans approved in advance thereof and only where reclamation of the affected lands to the standards set forth herein is attainable and assured; and to require a proper record and accounting of all coal produced.

(c) The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742; 30 U.S.C. 801) and the coal mine health and safety regulations contained in Chapter I of this Title is vested in the Mining Enforcement and Safety Administration, Department of the Interior.

(d) The provisions of this Part shall become effective upon the date of publication in the FEDERAL REGISTER as final rulemaking, except as hereinafter provided:

(1) Existing operations. (i) On and after 180 days from the effective date of this Part, the provisions of § 211.40(a) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this paragraph shall not be deemed to apply the requirements of § 211.40(a) (1) and (2) hereof to any operation for which a mining plan has been approved on or before the effective date of this Part and for which a variance pursuant to the provisions of § 211.40(a)(2) would be required.

(ii) Except as may be required to comply with the provisions of paragraph (i), all existing operations shall be conducted pursuant to their approved plan. On or before 18 months from the effective date of this Part, the operator of each existing operation shall have ob-

tained the approval of a plan or modification thereof which shall comply with all of the provisions of this Part, provided, however, that if the Director of the Geological Survey determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, such time period may be extended for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operations" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Part, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Part, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion, of such a statement.

(iv) On or before August 16, 1976, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Part and after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover a new or existing operation.

(2) All operations or proposed operations not included in the definition of "existing operations" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Part upon the effective date hereof.

(3) The provisions of § 211.72(c) shall apply immediately upon the effective date of this Part.

(e) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Part shall take into account and shall reflect and implement the provisions and purposes hereof, provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by paragraph (d)(1)(i) above.

(f) Nothing in this Part shall be deemed or construed to increase or diminish any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Part.

§ 211.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) *Acid or toxic producing materials* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or post mining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentrations to individually or in combination adversely affect the environment.

(b) *Affected lands* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *Approximate original contour* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *Area of operations* means that area of the leased, permitted, or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *Authorized officer* means any officer designated by any Federal agency having administrative jurisdiction over lands or minerals to exercise its authority in matters relating to the provisions of this Part.

(f) *Coal* includes coal of all ranks from lignite to anthracite.

(g) *Compaction* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *Conservation Manager* means a Conservation Manager, Conservation Division, Geological Survey.

(i) *Contemporaneously as practicable* means, with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct, and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Part.

(j) *Daylighting* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(k) *Director* means the Director of the Geological Survey, U.S. Department of the Interior.

(l) *Division Chief* means the Chief of the Conservation Division, Geological Survey.

(m) *Exploration* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(n) *Exploration plan* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(o) *General Coal Mining Order* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(p) *Impoundment* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in an approved plan.

(q) *Leased lands, leased premises, or leased tract* means lands embraced within a coal lease and subject to the regulations in this Part.

(r) *Lessee* means any person or persons, partnership, association, corporation, or municipality to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such lease under an approved assignment.

(s) *Licensee* means any individual, association of individuals, or municipality to whom a coal license is issued pursuant to the provisions of section 208 of Title 30 of the United States Code.

(t) *Logical mining unit* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(u) *Method of operation* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(v) *Mine* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(w) *Mining plan* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Part.

(x) *Mining Supervisor* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(y) *Notice of Availability* means a formal notification, by the appropriate Federal officer, to appropriate Federal, State, and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant, the nature, location (county, township, range, and section), duration and a brief description of any proposed operations; the date upon which any document involved was received and the date upon or after which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment, or request for any Departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, State, or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals, or groups at the addresses indicated on such lists.

(z) *Notice of noncompliance* means a written notice of operator noncompliance issued pursuant to § 211.72 of this Part.

(aa) *Operator* means a lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(bb) *Overburden* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(cc) *Permanent abandonment* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease, permit, or license and subject to the provisions of this Part, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(dd) *Permit lands* means lands embraced within a coal prospecting or other permit and subject to the regulations in this Part.

(ee) *Permittee* means any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting or other permit subject to the regulations in this Part is issued, or an approved assignee of such permit.

(ff) *Pollution* means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water, or air, which reduces, or has the potential of reducing, the beneficial uses of these resources.

(gg) *Post mining land use* means that use which will be made of the affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to this Part.

(hh) *Preparation* means any crushing, sizing, cleaning, drying, mixing, or other processing of coal to prepare it for market which is conducted on lands subject to this Part.

(ii) *Reclamation* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(jj) *Road* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved, or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities, or exploration activities.

(kk) *Secretary* means the Secretary of the Interior.

(ll) *Significant vegetation* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(mm) *Spoil* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Part.

(nn) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(oo) *Surface owner* means an entryman, or a person or persons who hold legal title to the land surface.

(pp) *Topsoil* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(qq) *Valley floors* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(rr) *Waste* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 211.3 Responsibilities.

(a) Subject to the supervisory authority of the Secretary, the regulations in this Part shall be administered by the Director, through the Division Chief, the Conservation Manager, and the Mining Supervisor.

(b) The Mining Supervisor is empowered to approve, disapprove, approve upon condition, or require modification of exploration and mining plans pursuant to the provisions of this Part.

(c) The Mining Supervisor is empowered to oversee prospecting, exploration, testing, development, mining, preparation, handling, reclamation, and abandonment operations subject to the provisions of this Part. The Mining Supervisor, in the performance of his duties, is authorized to consult with and solicit the views of other appropriate Federal, State and local agencies including the United States Environmental Protection Agency, and other interested parties, and shall:

(1) *Inspection of operations.* Examine, as frequently as necessary but at least quarterly, the lease, permit, or license lands where operations for the discovery, testing, development, mining, preparation, handling of coal, and reclamation of affected lands, are conducted, or are to be conducted; inspect such operations, for the purpose of determining whether waste or degradation of mineral substances or damage to formations and deposits or non-mineral resources affected by the operations is being minimized, and whether all provisions of applicable laws, regulations and orders, all terms and conditions of leases, permits, or licenses, and all requirements of approved exploration or mining plans are being complied with.

(2) *Compliance.* Require operators to conduct operations subject to this Part in compliance with all provisions of applicable laws, regulations, and orders, all terms and conditions of leases, permits, or licenses, and all requirements of approved exploration or mining plans.

(3) *Reports and recommendations.* Make reports to the Division Chief, through the Conservation Manager, as to the general conditions of lands under lease, permit or license, and the manner in which operations are being conducted and orders are being complied with; and submit information and recommendations for protecting the coal, the coal-bearing formations, other mineral resources, and the non-mineral resources. A copy of all such reports shall be furnished to the operator upon request, and shall be made available for public inspection during normal business hours at the Offices of the Mining Supervisor.

(4) *Manner and form of records, reports and notices.* Prescribe, subject to the approval of the Division Chief, the manner and form in which records of operations, reports, and notices shall be made.

(5) *Records of production; rentals and royalties.* Obtain and check coal production and sales records; determine rental and royalty liability of lessees and permittees; collect and deposit rental and royalty payments; maintain rental and royalty accounts.

(6) *Waiver, suspension, or reduction of rental or minimum royalty.* Act on applications for waiver, suspension, or reduction of rental or minimum royalty filed pursuant to 43 CFR 3503.3–2(d).

(7) *Suspension of operations and production.* Act on applications for suspension of operations or production, or both, filed pursuant to 43 CFR 3503.3-2(e), and terminate, when appropriate, suspensions which have been granted.

(8) *Cessation and abandonment of operations.* Upon receipt of notice of proposed abandonment of operations, or relinquishment of a lease, permit, or license, inspect and determine pursuant to § 211.41(d) hereof whether the operator has completed his operations in accordance with all applicable terms and conditions and whether all rentals and royalties due the lessor have been paid; determine and report to the appropriate authorized officer that the lands have been properly conditioned for abandonment; and recommend that the period of liability under the appropriate bond or bonds be terminated. Before taking any such action, the Mining Supervisor shall consult with and, where required, obtain the concurrence of, the appropriate authorized officer. When the surface of lands in a lease, permit or license is not owned by the United States, the Mining Supervisor shall, in addition, notify the surface owner, and shall solicit and take into account his comments and recommendations.

(9) *Wells or prospect holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might be incurred as a result of any wells or prospect holes drilled to, or through, the coal-bearing formations for any purpose, on lands embraced within a coal lease, permit, or license.

(10) *Trespass.* Report to the appropriate authorized officer any trespass that involves exploration activities or removal of coal.

(11) *Water and air quality.* Inspect operations to determine compliance with air and surface and ground water management and pollution control measures required by the terms and conditions of applicable leases, permits, or licenses, and approved plans, and promptly notify appropriate representatives of other Federal and State agencies in the event of any noncompliance.

(12) *Implementation of regulations.* Issue General Coal Mining Orders and other orders, make determinations, and grant consents and approvals as necessary to implement or assure compliance with the regulations in this Part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Compliance or performance bonds.* Determine whether the total amount of any bond or bonds furnished with respect to operations subject to this Part is at all times adequate to satisfy the estimated costs of completion of remaining reclamation requirements of the approved exploration or mining plan and the terms and conditions of the lease, permit, or license, and notify the appropriate authorized officer in the event of any inadequacies.

(14) *Consultation.* Consult with all appropriate authorized officers before taking any final action to approve an exploration or mining plan or modification thereof or to determine the appropriate amount of a compliance or performance bond or bonds. Any disagreements that cannot be resolved between the Geological Survey and the Bureau of Land Management arising in connection with any such final action or determination will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Any such disagreements between the Mining Supervisor and the appropriate authorized officer of any Federal surface management agency not in the Department of the Interior will be referred for resolution to comparable higher authorities in each agency, and, if necessary, to the respective Departments, for final resolution.

§ 211.4 General obligations.

(a) All operations involving the discovery, testing, development, mining, preparation and handling of coal, and the reclamation and abandonment of affected lands, shall be conducted pursuant to the obligations and standards of performance set forth in this Part, and shall conform to the provisions of all other applicable laws and regulations, including effluent and emission limitations; the terms and conditions of any applicable lease, permit, or license; the requirements of any applicable approved exploration or mining plan; and any orders issued by the Mining Supervisor.

(b) Coal mining operations shall be conducted so as to ensure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(c) The operator shall take all actions necessary to minimize waste and damage to any remaining coal-bearing formations and other mineral resources.

(d) The operator shall take such action as may be needed to minimize, control, or prevent (1) soil erosion; (2) pollution of air; (3) pollution of surface or ground water; (4) serious diminution of the normal flow of water; (5) adverse impact upon fish and wildlife, especially threatened or endangered species, and their habitat; (6) permanent damage to vegetative growth, crops or timber; (7) creation of unsafe or hazardous conditions; (8) damage to improvements, whether owned by the United States, its permittees, licensees, or lessees, or by others; (9) damage to the recreational, cultural, scientific, historical, and known or suspected archaeological and paleontological values of the land; and (10) adverse impacts upon adjacent land uses. Good housekeeping practices shall be observed at all times. Where any question arises as to the necessity for, or the adequacy of, an action to meet the requirements of this paragraph, the determination of the Mining Supervisor shall be final, subject to the right of appeal as provided in Part 290 of this Title.

(e) The operator shall, when and as required by the Mining Supervisor, monitor water quality to establish data necessary to determine procedures which may be required to minimize, control, or avoid water pollution pursuant to the regulations in this Part.

(f) The operator shall promptly report to the Mining Supervisor by telephone accidents threatening damage to the mine, the lands or other resources, or accidents which could cause air or water pollution, along with corrective actions initiated. Within 30 days after any such accident the operator shall submit to the Mining Supervisor a detailed report of any damage caused by such accident and any corrective actions taken. The obligation set forth in this paragraph shall be in addition to any obligations which may arise pursuant to the Coal Mine Health and Safety Act of 1969 and any regulations promulgated thereunder.

(g) The operator shall submit the reports required by Part 200 of this Chapter, this Part, and any other reports required by the Mining Supervisor.

§ 211.5 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this Part, all major decisions and determinations of any Mining Supervisor acting pursuant to this Part or to 43 CFR Subpart 3041 shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the Offices of such Mining Supervisor.

(b) *Availabilty of proposed plans and major modifications of plans.* All proposed mining plans and major modifications thereof, and all modifications containing a request for a variance pursuant to the provisions of this Part, submitted under Section 211.10 of this Part shall be available for public inspection in the office of the appropriate Mining Supervisor. To allow for such public inspection, a notice of the availabilty of any such plan or modification shall be prepared by the Mining Supervisor and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operations are located for posting or publication in accordance with the procedures of that office. No action with respect to approval of any such plan or modification shall be taken by the Mining Supervisor for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the operator in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) *Public participation.* (1) Upon the timely written request to the appropriate Mining Supervisor of any person having an interest which is or may be adversely affected, a public meeting shall be con-

ducted with respect to any of the following actions:

(i) Approval of a new or major modification, including any modification containing a request for a variance pursuant to § 211.74 hereof, of a previously approved exploration or mining plan.

(ii) Release of any substantial portion of a bond submitted pursuant to this Part covering obligations of performance or reclamation, including revegetation.

(iii) Aproval of final abandonment of any operation or portion thereof.

(2) Prior to the making of any decision or the taking of any of the actions described in paragraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of two consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posted at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey; mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the FEDERAL REGISTER. Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the FEDERAL REGISTER, within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to any such public meeting, the Mining Supervisor shall take into account all testimony submitted at such meeting, including any written comments submitted for the record. All such decisions or determinations shall be subject to appeal pursuant to the provisions of Part 290 of this Title.

(4) The public meeting requirements of subparagraph (1) of this subsection shall be deemed to have been satisfied if any public meeting, or a public hearing upon an environmental statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, has previously been conducted, in which all major issues and proposed terms and conditions of any such proposed decision or action have been considered, and with respect to which meeting or hearing all notice requirements of this Section have been met.

§ 211.6 Confidentiality.

Geological and geophysical data and information, including maps, that may be used to calculate coal reserves in place, and trade secrets and commercial and financial information obtained from any person under this Part which is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the permittee, licensee, lessee or operator, provided however that upon termination of a permit, lease or license, whether by expiration of its terms or otherwise, or final abandonment of operations, resource and reserve data and information that may be used to calculate coal reserves in place submitted and so identified as privileged or confidential may be made available for public inspection or made public or disclosed. As used in this Section, "resource and reserve data and information" means geological and geophysical data and information, including maps, relating to the coal deposits within the permit or leased lands or covered by an approved plan which is abandoned. Requests for inspection of resource and reserve data and information shall be made in accordance with the regulations set forth in 43 CFR Part 2, which implement the Freedom of Information Act, as amended (5 U.S.C. 552).

MAPS AND PLANS

§ 211.10 Exploration and mining plans.

(a) *General.* (1) Before conducting any operation on leased, permitted or licensed lands other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of, an exploration or mining plan. Casual use, as used in this subsection means activities which do not cause significant surface disturbance or damage to lands, resources and improvements, such as activities which do not include use of heavy equipment or explosives, or vehicular movement off established roads and trails which causes such disturbance. The operator shall submit seven copies of such plans. All such plans shall be identified by the name, address, and permit or lease number(s) of coal permits or leases included in the plan, and shall show in detail the proposed prospecting, exploration, testing, development, mining, preparation, reclamation, and abandonment operations to be conducted. Exploration or mining plans shall be consistent with and responsive to the requirements of the lease, permit, or license for maximizing recovery of mineral resources, for the protection of non-mineral resources, and for the reclamation of the surface of the lands affected by the operations. The exploration or mining plans shall show that reclamation is an integral part of the proposed operations and will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method.

(2) The mining plan shall cover all operations to be conducted on a lease or in a logical mining unit, provided, however, that if the size of a lease or unit or the duration of a proposed operation make it impossible at the time of submission of a proposed plan to set forth in full and complete detail all of the specific information required to be submitted under paragraph (c) hereof with respect to the minor operational details of future operations, a proposed plan may be approved which sets forth only such information as is available at the time of submission, and further provided, that: (i) The duration of the operations as to which full and complete information is set forth shall in no event be less than five years; (ii) the nature of the information as to which full and complete detail is not set forth, and the reasons therefor, shall be identified in the proposed plan and in any related notice of availability of any pending decision thereon; and (iii) the complete and detailed information not submitted shall be promptly submitted and made a part of the plan pursuant to the change in plan provisions of subparagraph (d)(2) hereof as soon as such information becomes available. Nothing in the preceding sentence shall be deemed to allow any operation other than casual use to be conducted in advance of approval of a plan or modification thereof which contains all such specific information with respect to such operation.

(b) *Exploration plans.* An exploration plan shall include all of the following:

(1) Names, addresses, and telephone number of persons responsible for operations under the plan and to whom notices and orders are to be delivered, and the names and addresses of surface owners of record and owners of record of sub-surface minerals, if other than the United States.

(2) A brief description, with maps where applicable, of geologic, water, vegetation, and other physical factors, and the distribution, abundance, and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area.

(3) A narrative description including:

(i) The method of exploration and types of equipment to be used.

(ii) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations.

(iii) The method for plugging drill holes.

(iv) The measures to be taken for surface reclamation, which shall include as appropriate:

(A) A reclamation schedule.

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbs, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(4) The estimated timetable for each phase of the work and for final completion of the program.

(5) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural, and drainage features, and the proposed location of drill holes, trenches and roads.

(6) Such other data as may be required by the Mining Supervisor.

(c) *Mining plans.* A mining plan shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered, and the names and addresses of surface owners of record, and owners of record of subsurface minerals, if other than the United States.

(2) A description, with maps and tables where appropriate, of the environment within the area where mining is to be conducted. Such description shall include, as a minimum, geologic conditions, including potential geologic hazards; types, depths, and distribution of soils; types, density, productivity, dominance, and distribution of vegetation; climatological data, including a monthly range of temperatures, precipitation and average direction and velocity of prevailing winds; and distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species.

(3) A description of the condition of the land covered by the mining plan, including:

(i) The uses existing at the time the mining plan is submitted for approval, and

(ii) The capability of the land immediately prior to any mining to support alternative uses, giving consideration to soil characteristics, including series, types, depths and distribution, topography, annual precipitation, and vegetative cover, including identification of dominant species.

(4) A description of the use which is proposed to be made of the land following reclamation, which shall take into account all applicable land use plans and programs.

(5) A description of how the proposed postmining land use is to be achieved, including any necessary support activities and facilities.

(6) A description of the proposed operation, including:

(i) The nature and extent of the coal deposit in terms of Btu content, ash, water, sulphur, volatile matter and carbon content, and including estimated recoverable reserves.

(ii) The method of mining, including mining sequence and proposed production rate.

(iii) The nature and timing of measures to be taken for surface reclamation, including as appropriate:

(A) A reclamation schedule, including the estimated timetable for each phase of the work and for final completion of the program.

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbs, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(iv) The engineering techniques proposed to be used in mining and reclamation, including the design and construction of roads, ditches, water retention facilities, dams, or settling ponds, and the control of water drainage and accumulation.

(v) A list of all major equipment.

(vi) An estimate of the cost per acre of reclamation including a separate breakdown for the cost of backfilling and grading, replacement of topsoil, seeding and/or planting, irrigation, fertilizing, and maintenance.

(vii) The method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in §§ 211.4 and 211.40 of this Part and any special terms and conditions of the lease, permit, or license.

(viii) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(ix) The steps to be taken to comply with all applicable air and water quality laws and regulations.

(x) The measures for ensuring the maximum practicable recovery of the mineral resource.

(xi) The method of abandonment.

(xii) Logs and analyses of overburden samples of each stratum from a number of drill holes sufficient to obtain a representative sample of the overburden overlying the coal and the stratum immediately below the coal to be mined, which unless specifically authorized by the Mining Supervisor based upon data already known to the Geological Survey or upon the nature of the coal seam and geological inferences which may be drawn therefrom, shall be not less than one hole on each 40 acres. Such logs and analyses shall identify each stratum penetrated, and shall contain an analysis of each such stratum for at least the following: nitrogen, phosphorus, potassium, pH, specific conductance, exchangeable sodium percentage and sodium absorption ratio. Such analyses will be used to determine which materials shall be buried and which materials are suitable for placement near the surface for favorable propagation of vegetation.

(xiii) The hydrology of the area, including quantity and quality of water in surface and ground water systems, water levels and water table measurements, data regarding dissolved and suspended solids under seasonal flow conditions, and an assessment of the probable impacts of the anticipated mining operation upon the hydrology of the area.

(xiv) Plans for protecting oil, gas, and water wells as well as oil, gas, and underground water resources, when encountered.

(xv) Any justification for not recovering any coal deposits that may be detrimentally affected in terms of future recovery by the coal development operations proposed.

(7) Suitable topographic maps or aerial photographs showing:

(i) Topographic, cultural, archaeological, and natural drainage features, roads, and vehicular trails.

(ii) The name of the watershed and location of the surface stream or tributary into which mine waters will be discharged, if applicable.

(iii) Cross sections and plan views of the land to be affected, including the actual area to be mined, showing elevation and location of drill holes and depicting the following information: the nature and depth of the various strata of overburden; the nature and thickness and extent of any coal, or if rider seams above the specific coal proposed to be mined; the nature of the strata beneath the coal to be mined for a vertical distance of at least 20 meters beneath the base of the coal seam; the location of the next known deeper coal seam below the deepest seam to be mined and representative characteristics thereof; the location of any other mineral values encountered; hydrologic data and other information relevant to the mining plan; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; location and extent of known surface and underground mine workings, oil or gas wells, and water wells within ¼ mile of the affected lands, the location of aquifers; the estimated elevation of the water table, and potentiometric surface; the location of spoil, waste, or refuse areas, and sequence of placement and topsoil preservation area; the location of all impoundments or water treatment facilities; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation activities.

(iv) Locations of surface structures and facilities, including loading facilities.

(v) For an underground mine, in addition, the planned mine layout, including location and dimensions of shafts, slopes, drifts, crosscuts, rooms, haulageways, aircourses, entries, and barrier pillars.

(vi) If auger mining is proposed, the location and diameter of auger holes, the depth to be drilled, and the estimated percentage of recovery. In determining whether or not to approve proposed auger mining, the Mining Supervisor shall take into account the percentage of recovery, which shall in general exceed 30 percent, and probable adverse effects upon water quality.

(8) Any requests for variances from the performance standards of this Part.

(d) *Action on plans.* (1) The Mining Supervisor, after reviewing and considering a proposed plan and all comments received thereon, and after consultation with the appropriate authorized officer, shall in writing promptly approve or disapprove such plan. In approving such a

plan the Mining Supervisor shall determine that such plan complies with all requirements of this Part, 30 CFR subpart 3041 and any lease, permit or license, and that reclamation as required thereby can be accomplished under the procedures set forth in such plan. The Mining Supervisor may impose such conditions upon such approval as may be necessary for the plan and operations to conform to the provisions of this Part and the terms and conditions of the lease, permit, or license. In disapproving such a plan, the Mining Supervisor shall indicate what modifications, if any, are necessary to, and would in fact, achieve such conformity. No such plan may be approved unless a bond executed pursuant to the provisions of 43 CFR subpart 3504, and conditioned upon compliance with all of the provisions of such plan, has been furnished to and approved by the appropriate authorized officer.

(2) *Changes in plans.* (i) *By Mining Supervisor.* Approved plans may be required to be reasonably revised or supplemented at any time by the Mining Supervisor, after consultation with the operator and the appropriate authorized officer, to adjust to changed conditions or to correct oversights.

(ii) *By the operator.* The operator may propose changes to an approved plan, and shall submit a written statement of any such proposed change and the justification therefor to the Mining Supervisor. The Mining Supervisor shall, after consultation with the appropriate authorized officer, in writing promptly approve or disapprove any such proposed change, or specify the modifications thereto under which it would be acceptable.

(iii) *By petition.* Any interested person may petition the Mining Supervisor to exercise the authority set forth in subparagraph (i) hereof. Any such petition shall be in writing, shall set forth the proposed revision, and shall state with reasonable particularity facts which demonstrate changed conditions or that oversights occurred at the time of approval which make modification necessary to bring the operation and plan into conformity with the obligations and requirements of this Part. Upon receipt of any such petition, the Mining Supervisor shall promptly decide whether the facts set forth are sufficient to warrant exercise of his authority pursuant to paragraph (i) above. A decision by the Mining Supervisor denying any such petition shall be considered a final decision of the Department.

(iv) *Public Notice.* If any change proposed under this subsection would constitute a major modification of an approved plan, or the grant of a variance pursuant to § 211.74 hereof, the Mining Supervisor shall follow the procedures provided in § 211.5(b) and (c) of this Part, and shall take any comments received into account in his decision.

§ 211.11 Approaching oil, gas, or water wells.

When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water or other fluid substances, the lessee shall include in his proposed plan all measures determined necessary by the Mining Supervisor in consultation with the appropriate Oil and Gas Supervisor of the Geological Survey to protect wells or bore holes, and obtain maximum recovery of the coal resource. If operations reveal unsuspected wells or bore holes, the operator shall promptly notify the Mining Supervisor and take no further actions which would disturb such wells or bore holes without his prior approval.

§ 211.12 Mine maps.

(a) *General requirements.* The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Mining Supervisor. All maps shall be appropriately marked with reference to government landmarks or lines and elevations with reference to sea level. Before a mine, or section of a mine, is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps and a copy shall be furnished to the Mining Supervisor. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease, permit, or license serial number; the lease boundary lines; surface buildings; dip of the bed; true north; map scale and explanatory legend; location, surface elevation, depth and thickness of the coal, and total depth of each borehole; auger holes; improvements; reclamation completed; topography, including subsidence resulting from mining; and the geologic and hydrologic conditions as determined from outcrops, drill holes, exploration or mining; water monitoring stations and such other information as the Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Mining Supervisor annually, or at such other times as he may request.

(b) *Underground mine maps.* Underground mine maps shall, in addition to the general requirements of paragraph (a) of this Section, show all mine workings; the date of extension of the mine workings and a coal section at each entry face; the location of all surface mine fans; the position of all fire walls, dams, main pumps, fire pipelines, permanent ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water, either in or above the workings of the mine; areas affected by squeezes; the elevations of surface and underground levels of all shafts, slopes or drifts, and the elevation of the floor, or bottom of the mine workings, at regular intervals in main entries, panels or sections, and sump areas. Any maps submitted to the Mining Enforcement and Safety Administration for the purpose of showing, and which in fact show, any of the specific data required by this subparagraph shall be acceptable in fulfillment of the requirements hereof.

(c) *Surface mine maps.* Surface mine maps shall, in addition to the general requirements of paragraph (a) of this Section, include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved mining plan. Such sections shall include the highwall; all worked out and reclaimed areas; the uncovered, but unmined, coal beds; and the elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet acceptable standards and shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

§ 211.13 Failure of lessee to furnish maps.

(a) *Liability of lessee for expense of survey.* If the operator fails to furnish a required or requested map, the Mining Supervisor shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(b) *Incorrect maps.* If any map submitted by an operator is believed to be incorrect, the Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator.

Prospecting and Exploration Operations

§ 211.20 Information required to be submitted.

The operator shall submit promptly to the Mining Supervisor, upon request, upon completion or suspension of prospecting or exploration operations, or as provided in his lease, permit, and license, duplicate signed copies of records and geologic interpretations of all prospecting and exploration operations performed on the lease or permit lands, including recoverable reserve calculations, along with vertical cross sections through the land and a map showing the location of coal outcrops, all drill holes, trenches, and other exploration activities. The records shall include a log of all strata penetrated and conditions encountered, such as water, quicksand, gas, or any unusual conditions; copies of all other in-hole surveys, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced; and copies of coal analyses and results of other tests conducted on the land. All drill holes, trenches, and excavations will be logged under the su-

pervision of a qualified geologist or engineer. Unless otherwise authorized by the Mining Supervisor, representative samples of all drill cores or cuttings shall be retained by the operator for one year and shall be available for inspection or analysis at the convenience of the Mining Supervisor. Confidentiality of such information will be accorded pursuant to the provisions of § 211.6 of this Part.

§ 211.21 Core and test holes.

(a) *Surveillance wells.* With the approval of the Mining Supervisor, drill holes may be utilized as surveillance wells for the purpose of monitoring the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(b) *Blowout control devices.* When drilling on lands valuable or potentially valuable for oil and gas or geothermal resources, the operator shall, when required by the Mining Supervisor, set and cement casing in the hole and install suitable blowout prevention equipment.

(c) *Use of wells by others.* Upon receipt of a written request from the surface owner or the appropriate authorized officer, the Mining Supervisor may approve the transfer of an exploratory well for further use as a water well. Approval of such well transfer will be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging. Nothing in this paragraph shall be deemed to supercede or affect the applicability of any State law requirements with respect to such transfer.

UNDERGROUND MINING

§ 211.30 Maximum recovery.

Underground mining operations shall be conducted so as to yield the maximum recovery of the coal deposits consistent with the protection and use of other natural resources, sound economic practice, and the protection of the environment—land, water, and air. No entry, level, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the Mining Supervisor.

§ 211.31 Subsidence.

a) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(b) Where pillars or panels are not removed, and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and of the strata above and immediately below the coal bed.

(c) The Mining Supervisor may require the operator to install a subsidence monitoring system consisting of elevation stations and tiltmeters in a number sufficient to determine the extent of any area that may be affected. All records of such surveys shall be accessible for review by the Mining Supervisor.

§ 211.32 Multiple seam mining.

(a) *Sequence of mining.* In general, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined, and simultaneous workings in an upper coal bed shall be kept in advance of the workings in each lower bed. The Mining Supervisor may authorize mining of any lower beds before mining the available coal in each known upper bed.

(b) *Protective barrier pillars in multiple seam mining.* In areas subject to multiple seam extraction, the protective barrier pillars for all main and secondary slope entries, main haulageways, primary aircourses, bleeder entries and manways in each seam shall be superimposed, regardless of vertical separation or rock competency; however, modifications, exceptions, or variations of this requirement may be approved in advance by the Mining Supervisor.

§ 211.33 Advance workings.

Where the room and pillar or other system of mining requires advance workings in solid coal, including entries, rooms or crosscuts, the lessee shall leave sufficient pillars to ensure the maximum practicable recovery of the coal deposits, upon retreat.

§ 211.35 Pillars left for support.

(a) *Barrier pillars.* The operator shall not, without the prior consent of the Mining Supervisor, mine any coal, drive any underground workings, or drill any lateral bore holes within 50 feet of any of the outside boundary lines of the leased lands, or within such greater distance of said boundary lines as the Mining Supervisor may prescribe. Payment up to and including the full value of the coal mined may be required for coal mined within such designated distances of the boundary without the written consent of the Mining Supervisor.

(b) *Lessee may be required to mine barrier pillars on adjacent lands.* If the coal beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations, the lessee shall, on the written order of the Mining Supervisor, mine out and remove all available Federal coal in such barrier, both in the lands covered by the lease and in the adjoining premises, if it can be mined without undue hardship to the lessee.

(c) *Privately or Indian owned coal on adjoining premises.* If the coal in adjoining premises is privately or Indian owned and this coal has been worked out, an agreement may be made with the coal owner for the extraction of the cost remaining in the boundary pillars which otherwise may be lost.

§ 211.36 Development of leased tract through adjoining mines.

An operator may, with the approval of the Mining Supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Mining Supervisor.

RECLAMATION AND PERFORMANCE STANDARDS

§ 211.40 Operating and reclamation standards.

(a) *Performance standards.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this Part, including the surface effects of underground mining:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Part.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading, or other means, so as to cover all acid-forming or other toxic materials, eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and, where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Part. Variance from the requirements of paragraphs (1) and (2) of this subsection may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physcial conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the back-

fill area, and if not so utilized immediately, segregate it in a separate pile from other soil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other material.

(5) The operator shall utilize water impoundments, water retention facilities, dams, or settling ponds only pursuant to an approved plan, and shall ensure that:

(i) Such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize, control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control, or prevent disturbances of the prevailing quality, quantity, and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through, acid or toxic-producing materials; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and walls to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall in any event be subject to the requirements of § 211.40(a)(5) of this section.

(iv) Protecting the quality, quantity, and flow, including depth of flow, of both upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of streams, avoiding mining, installing, reestablishing, or replacing aquifers or aquiludes, and replacing soil, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with paragraph (a)(4) of this section, and revegetate in accordance with paragraph (a)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of paragraph (a)(5) of this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine, provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan, and shall:

(i) Provide adequate advance written notice by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts, and ditches, into and across the site of operations, in a manner that will minimize, control, or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or private property.

(12)(i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance and exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked, and inspected and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosys-

tem, provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Part and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regraded area and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plant succession, at least equal in density and permanence to the natural vegetation; provided, however, that the Mining Supervisor with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-noxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner if other than the United States, determines that successful revegetation in compliance with paragraph (a) (13) (i) of this section has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate authorized officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit, or license; and

(B) where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to § 211.62(b) (2) hereof.

(14) The operator shall: (i) Except as provided in paragraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor in an approved plan.

§ 211.41 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other metthods. Reclamation and clean-up of nently abandoned underground or surfa surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved mining plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 211.40 of this Part, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

(d) *Notice of Abandonment; release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, or licenses, and with the requirements of the approved operating plan. Where the operator has complied with all such terms, conditions, and requirements, and the regulations of this Part, the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Mining Supervisor shall notify the surface owner and solicit and take into account his com-

ments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

REPORTS, RECORDS, ROYALTIES AND AUDITS

§ 211.62 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the affected lands.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate, with the Mining Supervisor within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth is being established, or whether additional revegetation efforts should be ordered by the Mining Supervisor.

(c) *Production and payments.* (1) *Lessees and permittees.* Lessees and permittees shall report, on the report form provided, within 30 days after expiration of the period covered by the report, all coal mined during each calendar quarter and the basis on which royalty has been paid or will be paid. The royalty for coal mined shall be paid on or before the end of the third month succeeding the extraction of the coal.

(2) *Licensees.* Licensees shall report all coal mined on a semi-annual basis on the report form provided.

(3) *Penalty.* If a lessee or permittee records or reports less than the true weight or value of coal mined, the Secretary may impose a penalty equal to either double the amount of royalty due on the shortage, or the full value of the shortage. If, after notice, a lessee or permittee maintains false records or files false reports, the Mining Supervisor may recommend that action be initiated to cancel the lease or permit, in addition to the imposition of any penalties.

§ 211.63 Value basis for royalty computation.

(a) Where only crushing, storing, and loading are performed prior to the point of sale, the value of the coal for royalty purposes shall be the gross value at the point of sale. However, if additional processing of the coal is performed prior to sale, such as washing to remove waste, bone, or other impurities, the processing cost above the cost of primary crushing, storing, and loading may be deducted from the gross value in determining value for royalty purposes. The Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the lessee provides him an accurate account of the costs so incurred.

(b) The gross value shall be the sale or contract unit price times the number of units sold, provided, however, that where the Mining Supervisor determines (i) that a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the coal produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal, or (ii) that no consideration is received for some or all of such coal because the lessee is consuming such coal for his own use or adding it to inventories, the Mining Supervisor shall determine the gross value of such coal, taking into account (A) any consideration received by the lessee in other related transactions, (B) the highest price paid for coal of like quality produced from the same general area during the lease month, (C) contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under such lease, which are comparable in terms, volume, time of execution, area of supply and other circumstances, and (D) such other relevant factors as the Mining Supervisor may deem appropriate, and further provided that in cases where coal which was added to inventories and for which the gross value has been determined in accordance with this subsection is eventually sold, the Mining Supervisor may require the payment of such additional royalties, or allow such credits or refunds, as may be necessary to adjust the royalty payments to reflect the actual gross value of the coal.

§ 211.64 Weight basis for royalty computation.

(a) All bone coal, rock, and other impurities may be removed from the raw coal prior to determination of coal weights for royalty purposes.

(b) If royalties become due and payable prior to removal of bone coal, rock, and other impurities or final weighing of coal, the Mining Supervisor may determine, by estimate, the weight of the coal for royalty purposes. In addition, the Mining Supervisor may, after the removal of bone coal, rock, and other impurities and final weighing of the coal, require the payment of such additional royalties, or allow such credits or refunds, as may be necessary to adjust the royalty payments to reflect the true weight of the coal.

§ 211.65 Audits.

An audit of the accounts and books of lessees and permittees for the purpose of determining compliance with lease or permit terms relating to royalties may be required annually, or at other such times as may be directed by the Mining Supervisor, by a qualified independent certified public accountant or by an independent public accountant licensed prior to December 31, 1970, by a State, territory, or insular possession of the United States or by the District of Columbia, and at the expense of the lessee. The lessee shall furnish, free of cost, duplicate copies of audit reports which express opinions on such compliance to the Mining Supervisor within 30 days after the completion of each audit. Where such audits are required, the Mining Supervisor will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.66 Maintenance of and access to records.

(a) Lessees and permittees shall maintain current and accurate records showing: (i) The type, quality or grade, and weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory); (ii) the prices received for all coal sold and to whom sold, by type and by quality or grade.

(b) The Mining Supervisor, or his designee, shall have access to all records of the lessees and permittees pertaining to compliance with lease or permit terms relating to royalties, including, but not limited to, (i) quantities mined, processed, sold, delivered, or used by the lessee; (ii) prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices; and (iii) costs of mining, processing, and transportation.

(c) Licensees must maintain a current record of all coal mined and removed.

INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT OF ORDERS AND APPEALS

§ 211.70 Inspection.

The operator shall provide access and means at all reasonable times for the Mining Supervisor to inspect or investigate the operation to determine whether it is in compliance with all applicable laws, regulations, and orders; the terms and conditions of the lease, permit, or license; and the requirements of any approved plan.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator shall inform the Mining Supervisor, in writing, of the operator's temporary and permanent post office address and the name and post office address of the su-

perintendent, or designated agent, who will be in charge of the operations and who will act as the local representative of the operator. Thereafter, the Mining Supervisor shall be informed of any change of such address.

(b) *Receipt of notices and orders.* The operator shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, posted at the mine or mine office or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator or his local representative.

§ 211.72 Enforcement of orders.

(a) If the Mining Supervisor determines that an operator subject to the provisions of this Part has failed to comply with the regulations in this Part, other applicable Departmental regulations, the terms and conditions of the lease, permit, or license, the requirements of an approved plan, or orders of the Mining Supervisor and such noncompliance does not threaten immediate and serious damage of the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Mining Supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with the notice of noncompliance within the time limits specified by the Mining Supervisor or to initiate an appeal pursuant to Part 290 of this Title shall be grounds for suspension of operations subject to such notice by the Mining Supervisor or his recommendations for the initiation of action for cancellation of the lease, permit, or license and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the lease, permit, or license, the requirements of an approved plan, or the orders of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator to the Mining Supervisor when such noncompliance has been corrected.

(c) If, in the judgment of the Mining Supervisor, an operator is conducting activities on lands subject to the provisions of this Part which fail to comply with the provisions of this Part the terms and conditions of the lease, permit, or license, the requirements of approved plans or the Mining Supervisor's orders, and which threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable ore-bearing mineral deposits or other resources, the Mining Supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in Part 290 of this Title. Compliance with such order shall not be suspended by reason of the taking of such an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a determination by such official that such suspension will not be detrimental to the lessor or adversely affect the public interest, or upon submission of a bond deemed adequate to indemnify the lessor from any resulting loss or damage.

§ 211.73 Appeals.

Orders, determinations, decisions, and notices issued pursuant to the provisions of this Part may be appealed as provided in Part 290 of this Title.

§ 211.74 Variances.

(a) Variances from compliance with the performance standards set forth in this Part may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in § 211.40(a) (2), (4), (6), (11), (12), or (13) of this Part, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly; or

(2) Where an applicant proposes a post mining land use that is substantially different from the land use immediately prior to exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 43 CFR 3041 and § 211.40(a) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected lands, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Supported by commitments and assured of investments from public agencies, where appropriate;

(iii) Practicable with respect to private financial capability for completion of the proposed development;

(iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operations and reclamation with the post mining land use;

(v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible, and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this Section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this Part.

(c) Any application for a variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench in an area classed as "steep slope" shall demonstrate to the satisfaction of the Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the operation is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor pursuant to the provisions of this Part. Minor changes of operations which do not involve violations of the performance standards set forth in this Part, and the granting of a variance pursuant to § 211.40(a)(2) of this Part, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement, as required by section 102(2)(C) of the National Environmental Policy Act, has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance to this section, he shall notify the appropriate land managing agency or land use planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any Management Framework Plan or equivalent land use plan.

§ 211.75 Applicability of State law.

(a) On the effective date of this Part, and from time to time thereafter, the Secretary shall direct a prompt review of State laws and regulations in effect or adopted and due to come into effect, relating to reclamation of lands disturbed by surface mining of coal in each State in which Federal coal has been leased, permitted, or licensed. If, after such review, the Secretary determines that the requirements of the laws and regulations of any such State afford general protection of environmental quality and values at least as stringent as would occur under exclusive application of this Part, he shall, by rulemaking, direct that the requirements of such State laws and regulations thereafter be applied as conditions upon the approval of any proposed exploration or mining plan, unless (i) the Secretary determines that such application of the requirements of such laws and regulations would unreasonably and substantially prevent the mining of Federal coal in such State, and (ii) the Secretary determines that it is in the overrriding national interest that such coal be produced without such application of such requirements. In any such determination of overriding national interest, the Secretary will consult in advance of such determination with the Governor of the State involved.

(b) On the effective date of this Part, the Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of formulating and entering into agreements to provide for a joint Federal-State program with respect to surface coal mining reclamation operations for administrative and enforcement purposes. Such agreements shall, wherever possible, provide for State administration and enforcement of such programs, provided that Federal interests are protected. Any such agreement shall be entered into by rulemaking, and shall have as its principal purpose the avoiding of quality of administration and enforcement of reclamation laws governing surface coal mine reclamation operations.

PART 216 [RESERVED]

Part 216 of Chapter II of this Title 30 of the Code of Federal Regulations is revoked.

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 23—SURFACE EXPLORATION MINING AND RECLAMATION OF LANDS

§ 23.2 [Amended]

Section 23.2(b) of Part 23 of Title 43 of the Code of Federal Regulations is amended by the deletion of the period and the addition at the end thereof of the following language: "; nor minerals or operations subject to the provisions of 43 CFR Subpart 3041."

Dated: May 11, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

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Title 43—Public Lands: Interior

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2393]

PART 3520—COMPETITIVE COAL LEASING

Coal Leasing Procedures

1. Section 3520 is amended by adding § 3520.0–4 to read as follows:

§ 3520.0–4 Objectives.

The objectives of the Department's coal leasing process, called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of Federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource planning; and environmental analysis. Nominations provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made. Environmental analysis will then be undertaken on the proposed coal lease tracts. The integration of these three elements: nominations, multiple resource planning, and environmental analysis—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

2. Section 3520.1–2 is renumbered 3520.1–3 and a new section 3520.1–2 is inserted to read:

§ 3520.1–2 Request for information on areas of interest.

(a) *Purpose.* This section establishes a procedure by which industry, the general public, and state and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections.

(b) *Description of process.* The Director will request information on an annual basis, or as necessary. The Request for Information on Areas of Interest will consist of two stages.

(1) Industry Nominations—nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) Areas of Public Concern—concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the Management Framework Planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations.* All nominations or statements of information for or opposed to leasing shall:

(1) (i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as to description required in subparagraph (1) (i) of this paragraph. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and shall not exceed 2,560 acres, or the acreage of a proposed logical mining unit, if greater than 2,560 acres.

(e) *Multiple nominations.* If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Public inspection of records.* Geological and geophysical information and data, including maps, that may be used to calculate coal reserves in place, and trade secrets and commercial and financial information, including the source of nominations for leasing, obtained under this section and identified as privileged or confidential shall not be available for public inspection without the consent of the person submitting the nomination.

(g) *Notice of requests for nominations on areas of interest.* (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and ranking of nominations, the period of time in which to submit nominations, and the addresses to which the nominations are to be submitted. (2) Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include: (i) lands not subject to the provisions of the Mineral Leasing Act such as lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns and villages and in national parks and monuments (30 U.S.C. 181); (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; and (iii) land subject to a coal lease, permit, or preference right lease application. (3) As a matter of policy, the Department does not intend to issue coal leases in National Wildlife Refuges, units of the National Park System, Wilderness Areas and areas designated by the Bureau of Land Management as primitive areas.

(h) Management Framework Plans and multiple land use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the Bureau of Land Management State Director will make available for his review the Management Framework Plans for that State and, as appropriate, adjacent States.

3. Section 3520.1–3, renumbered section 3520.1–2, is revised to read:

§ 3520.1–3 Competitive leases: Procedures.

(a) Coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. Under EMARS, the following

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actions will be taken in the order described in this section except certain steps, such as preparation of Management Framework Plans, may be undertaken simultaneously ad in conjunction with a request for nominations or environmental analysis. However, all steps must be completed before leasing can occur, except where coal leases may be issued under the Department's short-term leasing criteria.

(1) A Management Framework Plan, in accordance with Bureau of Land Management procedures, or the appropriate multiple use land management plan of the surface management agency, will be completed, the land to be leased will be included in a known coal leasing area (KCLA) and a request for nominations will be made pursuant to § 3520.1. The land-use planning process evaluates resource information from Federal agencies and State and local governments and nominations, and identifies areas from which proposed coal lease tracts may be selected. Prior to identifying proposed coal lease tracts, as provided in paragraph (a)(2) of this section, the Bureau of Land Management will hold a meeting to receive public comments on nominations and other resource uses identified in the Management Framework Planning process. Management Framework Plans will be continuously revised or supplemented to include information from nominations, U.S. Geological Survey coal mapping information, and data on reclamation potential from site studies carried out under the Department's Energy Minerals Rehabilitation Inventory and Analysis program.

(2) Proposed tracts will be selected by the Bureau of Land Management, United States Geological Survey field offices, affected State governments and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information, including information from the appropriate land use plan, from nominations, and from competitive coal lease applications on file.

(3) The selection of proposed lease tracts will include, but is not limited to, consideration of such criteria as: Depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities; potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, wildlife, and vegetative values; rehabilitation potential and such other criteria as the Secretary may develop for withholding lands from leasing as unsuitable for mining.

(4) The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental impact statement. An environmental analysis record or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental analysis record for a coal leasing proposal that indicates that an environmental impact statement is not required.

(5) A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2–1 will be completed on each unit to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon the environment and other resources, land uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigatable environmental damages.

(6) The State Director, after State government and surface management agency consultation, will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary. Prior to the Secretary's approval, the Secretary wil consult with the Governor of the State affected by the lease sale and the Secretary of Agriculture, where appropriate.

(7) Notice of sale or sale schedules shall be published in the FEDERAL REGISTER and in a newspaper of general circulation in the State affected.

(8) A presale evaluation of the resource in the tentative coal lease tract shall be conducted.

(9) After the sale, a post-sale evaluation of the bids shall be conducted.

4. Section 3521.2–1(a)(1) is amended by adding subparagraph (vi) to read as follows:

§ 3521.2–1 Application or Bureau—motion.

(a) *Application—(1) Forms—(i)* * * *

(vi) Applications for competitive coal leases will be accepted for information purposes, but all leasing units will be established in accordance with § 3520.-1–2.

* * * * *

5. Section 3521.2–5(a) is revised to read as follows:

§ 3521.2–5 Award of lease (competitive).

(a) *Notification of Award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids, the oral bidding will begin at the level of the highest sealed bid received which must at least equal the fair market value determination of the U.S. Geological Survey. After the oral bidding has ceased, the highest bid will be announced. No decision to accept or reject the high bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the high bid adequately reflects fair market value. The recommendations of the panel will be sent to the authorized officer who will make the final decision to accept a bid or reject all bids, as soon as possible, after the sale date. The successful bidder will begin to be notified in writing. The Department reserves the right to reject any and all bids.

(b) The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

Signed at Washington, D.C., on May 24, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76–15564 Filed 5–28–76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2394]

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Coal Leases; Diligent Development and Continuous Operations

1. 43 CFR 3500.0–5 is amended by the addition of the following new paragraphs (d), (e), (f), and (g):

§ 3500.0–5 Definitions.

* * * * *

(d) *Logical Mining Unit (LMU).* A Logical Mining Unit or LMU is an area of coal land that can be developed and mined in an efficient, economical and orderly manner with due regard to the conservation of coal reserves and other resources. An LMU may consist of one or more Federal leaseholds, and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be under the effective control of a single operator and capable of being developed and operated as a unified mine. Every Federal lease will automatically be considered by itself an LMU as of the effective date of the lease or (the effective date of these regulations), whichever is later. Any other LMU will become effective only upon its approval by the Mining Supervisor where it is requested by the lessee(s). The boundaries of an LMU may later be changed upon application by the lessee(s) and with the approval of the Mining Supervisor and after consultation with the authorized officer.

(e) *Logical Mining Unit (LMU) Reserves.* LMU Reserves are defined as being equal to the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU which will be mined prior to the extraction of all estimated Federal reserves in the LMU. The LMU reserves associated with a Federal lease are the estimated LMU reserves as of the effective date of the approval of the LMU, of which that lease is a part, except that the estimate of LMU reserves under both (1) and (2) above may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries or whenever significant new information becomes available about the amount of such reserves, including the time at which a mining plan is approved.

(f) *Diligent Development.* Diligent Development of a Federal lease means the timely preparation for and initiation of production of coal from the LMU of which the lease is a part so that one fortieth of the LMU reserves associated with that lease are extracted within a period of ten years (or such longer period as may be prescribed under paragraphs (1) or (2) below) from (the effective date of these regulations) or from the date of the lease, whichever is later.

(1) Upon application by the lessee, the period by the end of which diligent development must have been achieved, shall be increased by an amount of time equal to the period during which diligent development is, in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, or (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In the determination of whether any of the conditions listed in (i)–(iii) above occurred and whether one or more of those conditions did in fact significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales. or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application by the lessee, the Secretary may grant one extension, not exceeding five years, of the ten-year period within which diligent development must be achieved. An extension to the satisfaction of the Secretary that may be granted when the lessee shows diligent development cannot be achieved within the ten-year period because of (i) time needed to complete development of advanced technology, e.g., in-situ, gasification or liquefaction processes; (ii) the large magnitude of the project (ordinarily large magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract or its equivalent which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the ten-year period. Irrespective of the reason for granting an extension, the lessee must produce the first one-fortieth of the LMU reserves before the end of the extension.

(3) At the time when the Secretary grants any extension of time for achieving diligent development under subparagraphs (1) or (2) of this paragraph, he shall notify the lessee of the revised date by which diligent development must be achieved.

(g) *Continuous Operation.* Continuous operation means the extraction, processing, and marketing of coal in the annual average amount of one percent or more of the LMU reserves; the annual average amount shall be computed on a three year basis, and the three year period for which the average shall be computed shall consist of the year in question and the two preceding years.

2. 43 CFR 3503.3–2(b)(1) is amended to read as follows:

§ 3503.3–2 General statement royalties.

* * * * *

(b) * * *

(1) In accordance with the Secretary's determination in 43 CFR 3520.2–5, each lease issued or readjusted after (the effective date of these regulations) shall contain a requirement for an annual advance royalty based on a minimum number of tons of coal; the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of issuance of the lease or (the effective date of these regulations), whichever is later. Advance royalties shall begin (i) for each lease issued after (the effective date of these regulations) with the sixth year after issuance of the lease and (ii) for each lease issued prior to (the effective date of these regulations) with the first year following the next readjustment of terms or with the sixth year after (the effective date of these regulations), whichever is later.

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The requirement for advance royalties shall cease when royalties have been paid for all the leased reserves.

3. 43 CFR Subpart 3520 is amended by adding the following:

§ 3520.2–5 Coal: diligent development and continuous operation.

Section 7 of the Mineral Leasing Act (30 U.S.C. § 207) provides that each coal lease shall require:

(a) Diligent development; and

(b) Either continuous operation or an annual advance royalty on a minimum number of tons. The Secretary has determined that the public interest will be subserved by the requirement of an annual advance royalty in lieu of continuous operation. The requirement for advance royalties is described in 43 CFR 3503.3–2(b)(1). After the requirement for advance royalties has ceased, the lease shall be subject to the requirement of continuous operation. All leases which do not provide for advance royalties shall be subject to the condition of continuous operation beginning with the first year after diligent development is achieved and ending with the next year in which the terms of the leases are readjusted.

4. 43 CFR 3522.2–1 is amended to read as follows:

§ 3522.2–1 Terms and conditions.

(a) *General.* The terms and conditions of coal, potassium, and phosphate leases are subject to readjustment at the end of each 20-year period succeeding the effective date of the lease unless otherwise provided by law at the time of the expiration of such periods. Before the expiration of each 20-year period, whenever feasible, the lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after receipt of the notice, unless the lessee files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms.

(b) *Coal.* All coal leases will be readjusted, if necessary, at the end of the next scheduled adjustment of terms and conditions under paragraph (a) above by the addition of provisions consistent with 43 CFR 3503.3–2(b)(1) so that they require advance royalties. The percentages of reserves on which the advance royalty for the years following the readjustment of terms will be based will be the same percentages as those appropriate for a lease dated (the effective date of these regulations). Lessees will be allowed to credit against the advance royalties due under that schedule any production royalties paid in lease years prior to the readjustment of terms, which production royalties are in excess of advance royalties that would have been due had advance royalties been in effect from June 1, 1976.

§ 3523.2–1 [Amended]

5. 43 CFR 3523.2–1(b)(1) is amended by the insertion of "(i)" after the word "Coal" and by adding the following paragraphs (b)(ii) and (iii):

(ii) Any coal lease on which the lessee does not meet diligent development and either continuous operation or advance royalty requirements will be subject to cancellation in whole or in part. In deciding whether to cancel a lease under this paragraph (b)(ii), the Secretary will not consider adverse circumstances which arise out of normally foreseeable business risks, such as fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales. The requirements as to notice included in paragraph (b)(i) are applicable to cancellations under this paragraph also.

(iii) Should a lease be canceled or relinquished for any reason, all rentals and royalties, including advance royalties already paid or due, will be forfeited to the United States.

Effective: June 1, 1976.

Approved: May 25, 1976.

KENT FRIZZELL,
Secretary of the Interior.

[FR Doc.76–15690 Filed 5–27–76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2395]

PART 2900—LEASES

Recreation and Public Purposes Act Processing and Disposal of Solid Waste

In 43 CFR Chapter II, subpart 2912 is amended by adding §§ 2912.3 through 2912.3–4 to read as follows.

§ 2912.3 Leases for solid waste disposal sites.

AUTHORITY: 42 U.S.C. 3254e.

§ 2912.3–1 Requirement.

Compliance with *Guidelines for the Thermal Processing of Solid Wastes, Guidelines for the Land Disposal of Solid Waste, and Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers,* as promulgated by the Environmental Protection Agency, is required under leases issued for purposes involving disposal of solid waste. Each such lease shall contain provisions to insure compliance.

§ 2912.3–2 References.

(a) *Guidelines for the Thermal Processing of Solid Wastes* are contained in 40 CFR 240 (39 FR 29328–29338).

(b) *Guidelines for the Land Disposal of Solid Waste* are contained in 40 CFR 241 (39 FR 29328–29338).

(c) *Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers* are contained in 40 CFR 165 (39 FR 15236–15241).

§ 2912.3–3 Procedures.

(a) All new leases shall contain express stipulations requiring compliance with the above referenced guidelines. Leases and respective plans of development and management already in existence without such specific stipulations shall be amended to require compliance with the above guidelines by lessees. In all cases, the lease must stipulate that failure to comply with the guidelines shall constitute sufficient grounds for cancellation of the lease.

(b) Lease applicants shall include in the plan of development and management detailed descriptions of the methods and procedures that will be employed to achieve compliance with the above guidelines. The requirements in the guidelines delineate mandatory minimum standards of performance that must be followed. The recommended methods and procedures in the guidelines are means whereby the requirements can be met. Alternate methods and procedures may be used in meeting the requirements when approved by the authorized officer.

(c) Determinations as to how such compliance in meeting the requirements of the above guidelines shall occur are to be made by the authorized officer of the Bureau of Land Management. In making his determination the authorized officer shall take into consideration applicable Federal, State and local air, water pollution and solid waste disposal laws, regulations and plans.

§ 2912.3–4 Exceptions.

Leases under the act will not be used to provide sites for the disposal of permanent or long-term hazardous wastes.

JACK HORTON,
Assistant Secretary of the Interior.

JUNE 1, 1976.

[FR Doc.76–16487 Filed 6–7–76;8:45 am]

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Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2396]

PART 2900—LEASES

Administration of Special Land Use Permits

Chapter II, Title 43, Part 2920 of the Code of Federal Regulations is amended and revised to read as follows:

1. Section 2920.0–5 paragraph (d) is revised to read as follows:

§ 2920.0–5 Definitions.

* * * * *

(d) The term "commercial facilities and services" means accommodations, equipment, and other related supplies and services provided on a temporary or short-term basis by a private entrepreneur, whether an individual, a group, association, or qualified corporation, to facilitate public use of the public lands. These facilities and services may include, but are not limited to: trailer camps, automotive and transportation services, and portable sanitary facilities.

* * * * *

2. Section 2920.0–5 is amended by adding paragraphs (f) and (g) to read:

§ 2920.0–5 Definitions.

* * * * *

(f) The term "trailer camp" means an area of stable land used for temporary parking of trailers, with portable toilet or other removable sanitary facilities, and no installation of permanent pads or other permanent structures.

(g) The term "automotive and transportation services" means portable repair and fuel facilities, such as a "shop on wheels" or a gasoline or diesel fuel tanker truck, or similar arrangements or facilities.

3. Section 2920.3(a) is amended by adding paragraph (3) to read:

§ 2920.3 Terms.

(a) *General.* * * *

(3) A special land-use permit will not be issued for a longer term than one year, unless in the opinion of the authorized officer a longer term is considered necessary.

* * * * *

4. In section 2923.2, the last sentence is revised to read:

§ 2923.2 Applications.

* * * * *

* * * The application shall include sufficient detail to adequately describe the facilities and/or services to be provided and their purpose.

JACK HORTON,
Assistant Secretary of the Interior.

JUNE 1, 1976.

[FR Doc.76–16488 Filed 6–7–76;8:45 am]

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Circular Distribution List

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

[Circular No. 2397]

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

Bond Requirements

Subpart 3206 Lease Bonds is amended as follows:

1. Paragraph (b) of § 3206.1-1 is amended to read:

§ 3206.1-1 Types of bonds.

* * * * *

(b) Lease compliance bond. The lessee must furnish, prior to entry on the leased lands, and thereafter maintain a bond of not less than $10,000 conditioned on compliance with all the terms of the lease.

2. Section 3206.1-2 is amended to read:

§ 3206.1-2 Filing of bonds.

A single original copy of the bond on forms approved by the Director must be filed in the proper BLM office as required and directed by the authorized officer. For unit bond forms see 30 CFR Part 271.

CHRIS FARRAND,
Deputy Assistant Secretary of the Interior.

JUNE 3, 1976.

[FR Doc.76-16821 Filed 6-9-76;8:45 am]

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Circular Distribution List

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2398]

CITATIONS OF AUTHORITY

Update and Correction

43 CFR Chapter II is hereby amended as follows:

PART 1720—PROGRAMS AND OBJECTIVES

1. Section 1725.2(b) is amended to add the authority citation "(E.O. 11296, 31 FR 10663)" following the end of the paragraph.

PART 2110—GIFTS

2. A new paragraph (d) is added to § 2110.0–3 to read as follows:

§ 2110.0–3 Authority.

* * * * *

(d) Section 6(f) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(f)) authorizes the Secretary to accept donations of lands and interests in land, funds and other property for use in connection with his administration of the national wild and scenic rivers system.

PART 2550—MINING CLAIM OCCUPANCY ACT

NOTE.—Act expired but regulations retained for adjudication of pending applications.

3. The title of Part 2550 is amended to read as set forth above.

PART 2910—LEASES

4. The title of subpart 2914 is amended to read as follows:

Subpart 2914—Mining Claim Occupancy Act

NOTE.—Act expired but regulations retained for adjudication of pending applications.

PART 2860—COMMUNICATIONS

5. Subpart 2861 is amended by changing the phrase "the Act of February 15, 1901" in the 29th and 30th lines of § 2861.1(d) to read "the Act of March 4, 1911."

6. Subpart 2861 is amended by deleting § 2861.1(a) and by changing "§ 2861.1 (b)" to read "§ 2861.1(a)," by changing "§ 2861.1(c)' 'to read "§ 2861.1(b)," and by changing "§ 2861.1(d)" to read "§ 2861.1(c)."

PART 3100—OIL AND GAS LEASING

7. Section 3100.0–3(a)(1) is revised to read as follows:

§ 3100.0–3 Authority.

(a) *Public domain.* (1) The Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

8. Subpart 3814 is amended by adding at the end of § 3814.1(b) the following:

§ 3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

* * * * *

(b) * * *

Under the Act of June 21, 1949 (30 U.S.C. 54), a mineral entryman on a stock raising or other homestead entry or patent is also held liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals except that vested rights existing prior to June 21, 1949, are not impaired.

9. Section 3600.0–3(a) is revised to read as follows:

§ 3600.0–3 Authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 5040.0–3 of this chapter), if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15. 1954 (68 Stat. 53) (expired April 15, 1969, but reference is retained for adjudication of pending applications).

JACK O. HORTON,
Assistant Secretary of the Interior.

JULY 8, 1976.

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2399]

LAND RESOURCE MANAGEMENT

Miscellaneous Amendments

43 CFR Chapter II Subchapter B is amended as follows:

PART 2530—INDIAN ALLOTMENTS

1. Paragraph (c) of § 2533.2 is amended to read as follows:

§ 2533.2 Approval.

* * * * *

(c) If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

PART 2560—ALASKA OCCUPANCY AND USE

2. Paragraph (a) in § 2564.7 is amended to read as follows:

§ 2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.

(a) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the townsite trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with Part 4 of 43 CFR Subtitle A.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

3. Paragraph (a) of § 2741.6 is amended to read as follows:

§ 2741.6 General limitations and conditions.

(a) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres.

PART 2760—TOWNSITES

§ 2763.3 [Amended]

4. In paragraph (b) of § 2763.3 the figure "2580" acres is amended to read "2560".

PART 2812—TRAMROADS AND LOGGING ROADS

5. Section 2812.9 is revised to read as follows:

§ 2812.9 Appeals.

An appeal pursuant to Part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

PART 2820—ROADS AND HIGHWAYS

6. Section 2821.3–3 is amended to read as follows:

§ 2821.3–3 Concurrence by Federal Highway Administration.

The appropriate state highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Federal Highway Administration for a determination whether the lands and interets in lands are necessary for the purposes of Title 23, United States Code.

PART 2910—LEASES

7. Paragraph (a) of § 2912.1–1 is revised to read as follows:

§ 2912.1–1 Terms and conditions of lease.

(a) The term of leases under the act will be fixed by the authorized officer but will not exceed 20 years for nonprofit associations and nonprofit corporations and 25 years for Federal, State, and local governmental entities. Leases will be renewable at the discretion of such official (43 U.S.C. 869–1).

JACK O. HORTON,
Assistant Secretary of the Interior.

JULY 8, 1976.

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